96-38

PANAMA CANAL OVERSIGHT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON THE PANAMA CANAL

OF THE

COMMITTEE ON MERCHANT MARINE AND FISHERIES HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

PANAMA CANAL ADMINISTRATION OVERSIGHT

JULY 28, 1980

PANAMA CANAL ENVIRONMENTAL ISSUES OVERSIGHT

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PANAMA CANAL ADMINISTRATION OVERSIGHT

MONDAY, JULY 28, 1980

House of Representatives,
Subcommittee on the Panama Canal,
Committee on Merchant Marine and Fisheries,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 1334, Longworth House Office Building, the Hon. Carroll Hubbard (chairman of the subcommittee) presiding.

Present: Representatives Hubbard, Bauman, and Carney.

Also present: Mary Pat Barrett, Luis Luna, Merrill Whitman, and Guy Land.

Mr. Hubbard. The Chair will call to order the Subcommittee on the Panama Canal.

Two of our members are present and that is sufficient in that we have one from each of the parties. It could be said one from each side of the aisle.

This is the second in a series of hearings by this subcommittee inquiring into the actions taken to carry into effect the provisions of Public Law 96-70, approved September 27, 1979. That act provides for operation of the Panama Canal under rights granted to the United States under the 1977 treaty with Panama.

Under rule X of the House of Representatives, each standing committee is required to review and study on a continuing basis the administration and execution of all laws within its legislative jurisdiction. Under rule XI committee reports are required to include oversight findings separately set out and clearly identified.

Specifically the purpose of the hearing this morning is to examine the manner in which the provisions of Public Law 96-70 have been carried into effect in the organization and operation of the Panama Canal Commission established by title I of that act.

As background, paragraph 1 of article III of the 1977 treaty grants to the United States the rights to manage, operate, and maintain the Panama Canal. Paragraph 3 of that article provides that the United States will in accordance with the terms of this treaty and the provisions of U.S. law, carry out its responsibilities by means of a U.S. governmental agency called the Panama Canal Commission, which shall be constituted by and in conformity with the laws of the United States of America.

Paragraph 3 of article II of the treaty goes on to provide that the Commission shall be supervised by a nine-member Board, five of whom shall be nationals of the United States and four of whom shall be Panamanian nationals proposed by the Republic of Panama for appointment to such positions by the United States of America.

Title I of Public Law 96–70 established the Panama Canal Commission as an agency in the executive branch of the U.S. Government. Under the Constitution, the President is the head of the entire executive branch and section 1101 of Public Law 96–70 provides that the authority of the President with respect to the Commission shall be exercised through the Secretary of Defense.

Consistent with that provision, the President has delegated substantially all of his supervisory authority over the Commission as a Government agency in the executive branch to the Secretary of Defense. This was accomplished by Executive Order No. 12215 issued May 27, 1980.

It should also be kept in mind that prior to the effective date of Public Law 96–70, the Panama Canal was operated by a Government agency in corporate form called the Panama Canal Company.

The law governing the operations of that agency specifically provided that management of the corporation was vested in a Board of directors and the law vested broad and extensive powers in the company.

All these former provisions were repealed by Public Law 96–70 and an entirely different form of Government agency was substituted under the direct control of the President through the Secretary of Defense.

At the time the bill, which was eventually enacted as Public Law 96–70, was under consideration by the Congress, both the Government of Panama and the corporate agency then operating the canal objected strenuously to the provisions of the law that gave direct control to the President through the Secretary of Defense and substituted a supervisory Board for the former Board of directors which had full management powers over the discontinued corporate agency.

The members of the supervisory Board established by the act were appointed by the President after the nomination so the members who were U.S. nationals were confirmed by the Senate.

The committee has not been advised as to the dates when the appointments were made or when the members qualified by taking the oath of office. We hope to obtain that information in the course of the testimony this morning.

The supervisory Board held its first meeting early in June of this year and a press release issued after the meeting announced that the Board of directors of the Panama Canal Commission had met and assumed responsibility for policy making and supervision of the affairs of the Panama Canal Commission.

The press release further stated that actions taken by the Board included approval of the regulations which govern the functions of the Board as specified in the Panama Canal Treaty of 1977.

The description of the action of the Board in the press release raised a number of questions in regard to the authority of the Board and the relationship of the regulations to the controlling provisions of Public Law 96–70.

Inasmuch as under the provisions of Public Law 96–70, the President, through the Secretary of Defense, has ultimate authority and responsibility for operation of the canal, the subcommittee invited the Secretary to appear today and inform the committee in regard to what steps have been taken to carry the provisions of the law into effect, with particular reference to whether the members of the Board had been duly appointed and had taken the oath, and the relationship of the Board to the Commission under the terms of the law.

Shortly after the hearing was scheduled, a copy of the regulations adopted by the Board at the June meeting was furnished to the subcommittee, but the text of the regulations is somewhat less than reassuring.

The regulations appear to adopt in toto the theory pressed by the proponents of the 1977 treaty during the debate on H.R. 111, which was ultimately passed as Public Law 96-70.

The law in its present form was enacted after a series of votes rejecting the organizational structure which these regulations appear to incorporate.

At my request, a comparative analysis of the provisions of the regulations has been prepared for the subcommittee by Mr. Merrill Whitman. Without objection, that analysis will be included in the record at an appropriate place.

Mr. **Hubbard**. Appearing for the Secretary of Defense this morning is Hon. Michael Blumenfeld, Assistant Secretary of the Army for Civil Works. We welcome you to the subcommittee and appreciate your being present.

In addition to his distinguished service as a prominent official of the Department of Defense, Mr. Blumenfeld was formerly Chairman of the Board of Directors of the Panama Canal Company, and I understand that he has been elected Chairman of the Board of the Panama Canal Commission.

He is uniquely qualified to provide the authoritative information the subcommittee so acutely needs to discharge its oversight responsibilities and we are delighted to have him with us today.

Again I say we are delighted to have Michael Blumenfeld with us today.

Before proceeding with his testimony, the Chair will inquire whether or not other members of the subcommittee wish to make opening statements this morning.

Our distinguished ranking minority member, Mr. Robert Bauman, Congressman from Maryland, is here.

While he gathers his thoughts and notes, we would ask the distinguished Congressman from Long Island, N.Y., Mr. William Carney, if he has an opening statement he would like to make?

Mr. **Carney**. Mr. Chairman, I would take this opportunity—I do not have an opening statement.

I would yield to the ranking minority member, Mr. Bauman, from Maryland.

Mr. **Bauman**. Thank you very much.

I have had occasion over the weekend to read the minutes of the first meeting of the board of supervisors, now apparently called the board of directors, and also to look at the prepared remarks of today's witness.

I would like to add a few remarks which might set this issue into some perspective, at least from my viewpoint.

I would like to associate myself with your remarks, Mr. Chairman, and also your reservations about the way in which Public Law 96-70, the Panama Canal Act which implemented the treaties of 1977, has been interpreted by the Panama Canal Commission's supervisory board.

I am particularly concerned about the implications of the board's newly promulgated regulations. I would not want to see an attempt made to subvert the intent of the implementing legislation or grant the operation of the Panama Canal an organizational structure which was rejected by the Congress.

As we all know, especially those of us who went through the canal debate on a daily basis for more than a year, the implementing legislation was approved after lengthy debate, much negotiation, two conference reports, and bitter disagreement over the impact of the controversial treaties themselves.

Together with the extensive debate about the issue, there were several close votes, very close votes, on the implementing legislation, both in this committee and on the floor. Even though those votes were close, there shouldn't be any mistake about what the Congress intended.

We specified that the Commission be an appropriated fund agency, whose authority flows from the President through the Secretary of Defense. We also specified that the Commission be supervised by a nine-member, binational board consistent with the treaties, notwithstanding the desire of the Carter administration to turn control of the canal over to the State Department or the desire of the Panamanians to have operational control over the canal.

I might say that this was my view of what the Panamanian members attempted at the board meeting, as reflected by the minutes.

I certainly do not want to see the issue about the extent to which the House, or the Congress, can work its will on the Panama Canal matter reopened, but by the looks of these regulations it seems to me that the board has ignored the will of the House to a large degree, has ignored the implementing legislation, and has even ignored the Panama Canal treaties themselves.

I would suggest that we need at these hearings to look at the regulations and how consistent they are with existing law.

For instance, reading the new regulations, before we even get to the text, the Board has christened itself a Board of Directors. We rejected the corporate form from the beginning of this legislation and we still reject it.

If you look at the Panama Canal treaties, under article III, which describes the management of the canal, there is a mention of this Board as a supervisory Board.

Under chapter I, section 1102 of the Panama Canal Act, there is a further detailing of the functions of this Board of Supervisors.

This is not a semantics game. The difference between directors and supervisors was made clear by the House and the Senate. We stipulated that there would be a change in the way the canal is managed, that the corporate agency form was to be abolished and in its place we would have a new appropriated fund agency.

I would not like to see an attempt on the part of those who opposed the House and Senate's decision to try to circumvent the intent of our legislation.

Let me give you another example. Section 1102(c) of Public Law 96-70 specifies that a quorum for the transaction of business shall consist of a majority of the Board members, of which a majority of those present are nationals of the United States. Yet the newly adopted Board regulations, after repeating this requirement in one section, then goes on to set up an executive committee which, incidentally, I noticed even the Panamanians were opposed to, empowered to "exercise all the powers of the Board of Directors."

This executive committee consists of only four members, two Panamanian nations and two U.S. nationals. Nowhere in the implementing legislation is the Board authorized to lend its powers to anyone else, or to any smaller body.

I must point out that the regulations do not even reference, at any point, Public Law 96-70. Nowhere do I see it mentioned in the opening statement by Secretary Blumenfeld, by the Panamanians, by the administrator, by anyone, save for one brief reference by Ambassador Moss to Public Law 96-70.

Nowhere in the meeting is there any defense against the attacks on Public Law 96-70, which the Panamanians in their statement specifically declare to be null and void as far as they are concerned.

Ambassador Moss' only reference to Public Law 96-70 is a glancing one to the President's statement that the law will be enforced strictly and consistent with the terms of the treaty.

So I am quite disturbed by the provisions in the regulations, which suggest that these regulations shall apparently be a new interpretation of law.

One other point that concerns me is the fact that the Board meetings shall not be open to the public. It seems to me that, while a closed meeting may lend itself to a display of unity, it also closes out a full understanding of what the Board's deliberations are.

Mr. Chairman, we spent too much time and too many ballots in both Houses of the Congress over the treaties and the implementing legislation to let the operation of this highly controversial matter be governed by the Board's unilateral interpretation of the treaty and the implementing legislation.

I am very pleased we will have this chance today to ask of our witnesses precisely what direction they see this issue taking. I would also like to inform the chairman that in light of the Board's regulations, their content, and the actions of the Board, I no longer favor having the authorizing legislation for the Panama Canal for fiscal year 1981 brought up before the House under suspension of the rules.

I may wish to offer amendments to resolve the difficulties that I will be addressing today, and under the House rules, suspension would not permit that. I think we need to thoroughly air this matter in this subcommittee, in the full committee, and on the floor of the House; and I do not rule out the possibility—although I hope it doesn't have to go that way—that we will have a complete replay of the issue of last year of the implementing legislation on the floor of the House before we adjourn.

Thank you, Mr. Chairman.

Mr. **Hubbard**. Thank you, Congressman Bauman

Congressman Carney, who yielded to Mr. Bauman—the only reason I skipped over Mr. Bauman was because he might not have been ready. Congressman Carney.

Mr. **Carney**. Mr. Chairman, I would just like to say that I would like to associate myself with the remarks of the chairman and the ranking minority member of this committee.

I too share that same concern you, as chairman, and Mr. Bauman, as the ranking minority member, have to the carrying out of the intent in this Congress and hope that we will not have to rehash our intentions when it comes to the appropriate time on the floor of the House.

Hopefully, the actions of this committee can solve the questions that we as a Congress might have pertaining to the carrying out of our implementation of the legislation and would alleviate the necessity to rehash this in both Houses of Congress.

Thank you, Mr. Chairman.

Mr. **Hubbard**. Thank you, Congressman Carney.

We will call upon you, Mr. Blumenfeld, for your testimony. Thank you for being with us.

STATEMENT OF HON. MICHAEL BLUMENFELD, ASSISTANT SECRETARY OF THE ARMY, CIVIL WORKS, ACCOMPANIED BY DENNIS P. McAULIFFE, ADMINISTRATOR, PANAMA CANAL COMMISSION, AND MICHAEL RHODE, JR., SECRETARY

Mr. **Blumenfeld**. Thank you, Mr. Chairman. It is a great pleasure to be here before this committee.

If I may, I would like to enter the full text of my testimony into the record.

Mr. **Hubbard**. Without objection, so ordered.

[The information follows:]

Statement by Hon. Michael Blumenfeld, Assistant Secretary of the Army (Civil Works) and Chairman of the Board of Directors, Panama Canal Commission

Mr. Chairman, I am honored to appear before the committee today as the representative of the Secretary of Defense. I am responding to your inquiry regarding the manner in which Public Law 96-70, the Panama Canal Act of 1979, has been implemented in the organization and operation of the Panama Canal Commission. My testimony this morning will focus on appointment of the members of the Board of Directors; the role of the Secretary of Defense with regard to the operation of the Commission; the implementation of the Panama Canal Act and Executive Order 12215 of May 27, 1980; the specific authority of the Board of Directors and the Administrator, Panama Canal Commission; and operation of the Board to date.

ROLE OF THE SECRETARY OF DEFENSE

I act on behalf of the Secretary of the Army as the representative of the Secretary of Defense to assure that the Panama Canal Commission functions effectively and efficiently under the Treaty. In this role, my staff and I review legislative and executive proposals of the Commission; testify at authorization hearings; coordinate within DoD and with other Executive agencies as required on actions involving the Commission; and serve as the primary point of contact within the Department of Defense regarding management, operation and maintenance of the Canal. Defense of the Canal remains a DoD functional responsibility, and is exercised by the Joint Chiefs of Staff and U.S. Southern Command on a mission basis.

DELEGATIONS OF AUTHORITY

As you are aware, Mr. Chairman, in Executive Order 12215 of May 27, 1980, the President vested certain authority in the Secretary of Defense. That order also directed the Secretary to insure by redelegation or otherwise, that certain Canal operation and management functions, as opposed to items of an oversight or coordinating nature, be carried out by the Commission. By memorandum of July 18, 1980, the Secretary of Defense redelegated certain authority to the Secretary of the Army and to the Commission. I have submitted a copy of that memorandum for the record. You will see from that document that those functions requiring a coordinated role between Defense and the Commission were vested in the Secretary of the Army.

APPOINTMENT OF THE BOARD

In accordance with Section 1102 of the Panama Canal Act of 1979, the Board of the Commission has been appointed by the President. The U.S. members have been confirmed by the Senate. As you are aware, I am the designee of the Secretary of Defense. The other U.S. members appointed and confirmed are:

Mr. John Bushnell, Deputy Assistant Secretary for Inter-American Affairs, Department of State. Mr. Bushnell brings to the Board important experience in the areas of foreign affairs and inernational law.

Mr. Jay W. Clark. Jay Clark rose through the ranks of Delta Lines to be President of the Company and to later serve as Chairman of the Board. He tendered his resignation effective January 1, 1980, to assume active management of Clark Maritime Associates, Inc. The appointment of Mr. Clark to the Board satisfies the statutory requirement that one member be knowledgeable and experienced in the management and operation of an American-flag steamship line which had ships regularly transiting the Canal.

Mr. Clifford B. O'Hara is the Board member experienced and knowledgeable in United States port operations. Mr. O'Hara is the Director of Port Commerce for the Port Authority of New York and New Jersey. Mr. O'Hara is in charge of the Authority's program to develop the commerce and transportation of the Port District.

Mr. William Sidell, past General President of the United Brotherhood of Carpenters and Joiners of America, is the member experienced and knowledgeable in labor matters in the United States and has held offices at local, state, and national levels.

The Panamanian members of the Board are: Mr. Edwin Fabrega, General Manager of the Institute of Hydraulic Resources and Electrification; Mr. Roberto Heurtematte, a prominent businessman and former Ambassador to the United States; Mr. Ricardo Rodriguez, the Minister of Government and Justice; and Mr. Tomas Paredes, Director of the Executive Bureau for Panama Canal Treaty Affairs.

OATH

The U.S. and Panamanian members executed written affidavits prior to formally assuming office, to faithfully discharge their duties as Board members. In May, the Panamanian members were sworn in by the Deputy Administrator—a U.S. official designated in writing to do so—and the U.S. members were sworn in on June 1. Thus, on June 1, 1980, the Board was duly constituted.

ACTIONS BY THE BOARD OF DIRECTORS

As the Secretary of Defense's designee on the Board of the Commission, I can, pursuant to P.L. 96-70, direct the vote of the U.S. majority on the Board. The Board convened for the first time in Panama on June 2. At the first session, I was elected Chairman of the Board. Primary items on the agenda of the first meeting included overview briefings on personnel and financial matters; a review of actions taken by the Commission through May; adoption of the Board regulations, copies of which have been provided to your Committee; establishment of Board Committees to facilitate doing Board business; and preliminary discussion of a Code of Conduct. The meeting, I believe, established a sound framework for future operations.

The regulations adopted by the Board provide, in part, that regular meetings will be held at least quarterly, and that at least two of these will be conducted in Panama each year. They also provide for special meetings which may be called by the Chairman upon five days telephonic notice. The provisions of the regulations dealing with the composition of the Board and the quorum requirements embody those specified by P.L. 96-70.

Other salient provisions of the regulations are the sections providing for main and branch offices of the Commission in Panama and Washington, respectively; establishment of standing and special committees of the Board; and continuation of the concept followed by the Panama Canal Company that the Secretary of the agency serves both as an officer of the Board and the Commission official responsible for the operation of the Washington office.

In my role as the individual responsible for oversight of the Commission on behalf of the Secretary of Defense, I have approved the regulations adopted by the Board.

A second Board meeting, also in Panama, was held on July 21 and 22. At this meeting, the Board approved the minutes of the first meeting and adopted a Code of Conduct as required by section 1112 of the Panama Canal Act of 1979. This Code of Conduct includes provisions substantially equivalent to the laws cited in the Act, and the action was accomplished within sixty days of the Board being properly constituted. The Administrator was authorized to issue supplemental regulations to augment the provisions of the Code. Copies of the Code of Conduct will be provided to the Committee shortly. Copies of the minutes of the first meeting have already been provided, and I will routinely provide copies of Board-approved minutes to both this Committee and the Senate Armed Services Committee.

The Board also reviewed and approved for submission to OMB the budget proposal for fiscal year 1982, thus marking the first opportunity for the Binational Board to participate in the authorization and appropriation process. Since this budget proposal is still subject to review and approval by the President, I will limit my comments with regard to it to advising the Committee that it anticipates no toll increase from fiscal year 1981. As you know, the fiscal year 1981 budget, in turn, proposes no toll increase from fiscal year 1980.

I would like to take this opportunity to advise the Committee that, to date, this Binational Board has approached its task with a serious intent and resolve to improve Canal operations both now and in the future, and to do so in a spirit of cooperation. As is reflected in the minutes of its first meeting, the Board recognizes that it is responsible for policy making and supervision of the Panama Canal Commission and I can assure you that this unique body will carry out those responsibilities in a fashion fully consistent with both the Treaty and P.L. 96-70.

AUTHORITY OF THE COMMISSION

The question of whether the Board or the Administrator should exercise the authority vested in the Commission by the Panama Canal Act and the Executive Order was a major discussion item at the second Board meeting held this past week, and will be on the agenda for the third meeting of the Board scheduled for October. Generally, the Board would retain the prerogative to review all decisions of the Administrator, but would exercise only that authority necessary for executive-level management of the Canal enterprise. Other authority vested in the Commission would be exercised by the Administrator.

EMPLOYMENT SYSTEM

The authority to establish and regulate the Panama Canal Employment System has been delegated through the Secretary of Defense to the Panama Canal Commission. In the interim period, as you know, the Canal Zone Merit System remains the primary employment system in effect for United States Government agencies in the Panama Canal Area. The Commission staff is in the final stages of coordinating the draft Panama Canal Employment System and it is scheduled to be presented to the Board Personnel Committee in October. The target date of implementation is January 1981.

I also serve as Chairman of the Panama Area Personnel Board which is responsible for coordinating the personnel and wage practices of all participating agencies. This Board currently reviews any proposed change to the Canal Zone Merit System. Once the Panama Canal Employment System is established, the Personnel Board will continue to serve as the coordinating mechanism in order to assure that compatible wage and employment practices prevail among all agencies on the Isthmus. The other two members of the Personnel Board are the Commander in Chief of the U.S. Southern Command and the Administrator of the Commission.

SUMMARY

I am confident that the actions of the Executive Branch to date have been fully consistent with the letter and spirit of the requirements mandated by the Congress in P.L. 96-70. The task of reorganizing the Panama Canal enterprise, while simultaneously adjusting to an appropriated fund form for the agency has been, and continues to be, a challenging task. However, I believe we have accomplished the required actions in an effective manner.

Mr. Chairman, I am accompanied today by the Administrator of the Panama Canal Commission, Mr. D. P. McAuliffe, and the Agency's Secretary, Mr. Michael Rhode, Jr. I request that they join me at the witness table as I respond to any questions the Committee might have.

Thank you.

Mr. Blumenfeld. Thank you, Mr. Chairman.

I would summarize that statement in some of its more important aspects. If I may, let me preface this summary by some reactions to the statements made by you and by Congressman Bauman and Congressman Carney.

I am delighted to be here this morning to discuss with the committee, and hopefully persuade the committee, how indeed all of the actions taken thus far by the Panama Canal Commission are in full compliance with the requirements of Public Law 96-70.

Though I will not discuss I do not plan to cover the details of regulations or of the contents of the minutes of the first Board meeting, whatever the committee would like to look into, I will discuss.

Let me suggest, in addition, we step back for a moment and see what the performance thus far has been of the Panama Canal Commission.

There has been continuous operation of the canal. There has been no exodus of U.S. employees, which some had feared as a result of the treaty implementation.

There has been no toll increase in 1981, nor, as I point out later in my testimony, is a toll increase planned for 1982.

This is a good track record, I believe, and I would urge the committee to attend to that track record as well as to the details of Board regulations and the like.

With respect to those regulations and to the structure of delegations of authority that have taken place, let me say a couple of words.

We are acutely aware that we cannot turn an appropriated fund agency into the corporation that used to be the Panama Canal Company. The Administrator is aware of that daily. I am aware of that daily as we deal with the requirements of an appropriated fund agency. There is not an attempt to convert it into something which Congress rejected, and if the intent were there, there isn't the ability.

No. 2, as you read the minutes of the Board meetings—and we will be, as a matter of routine, making copies of these minutes available to the committee, as well as to the Senate Armed Services Committee, as soon as they are produced—I would urge the committee not to fix upon what the Panamanian Board members say, but to watch what the Commission does. I guarantee this committee that what the Commission does has been and will be in full compliance with Public Law 96-70.

With respect to the terminology "Board of Directors" versus "Supervisory Board," we have had some discussions on this heretofore. We believe that the term "Board of Directors" is merely a semantic difference vis-a-vis "Supervisory Board." To reassure myself on that point, this weekend I took a look at the Random House Dictionary of the English Language in its unabridged edition. That dictionary refers to "supervisory" as "having supervision." In turn, it refers to "supervision" as the act of supervising; and in turn it defines the act of supervising, as "to oversee during execution or performance, to superintend, to have the oversight and direction of."

I believe that the terminology is only a semantic difference, but I would add that the term "board of directors" is one that is fully justified both by the common English definition of "supervisory," as I have just pointed out, as well as by the equal authenticity of the term "junta directiva" in article III of the treaty in its Spanish version as it refers to the supervisory board which we have been talking about here.

With that preface, let me sketch the highlights of my testimony, if I may. I will try to be reasonably quick so that the committee can go to what I know are many questions.

I am responding today to your inquiry regarding the manner in which Public Law 96-70 has been implemented in the organization and operation of the Panama Canal Commission.

I act on behalf of the Secretary of the Army as the representative of the Secretary of Defense to assure that the Panama Canal Commission functions effectively and efficiently under the treaty.

I serve as the primary point of contact within the Department of Defense regarding the management, operation, and maintenance of the canal.

The defense of the canal remains a DOD functional responsibility and is exercised by the Joint Chiefs of Staff and the U.S. Southern Command on a mission basis.

As you are aware, Mr. Chairman, and you referred to it in your opening statement, Executive Order 12215 was issued on May 27, 1980. The President vested thereby certain authority in the Secretary of Defense.

That order also directed the Secretary to insure by redelegation or otherwise that certain canal operation and management functions, as opposed to the items of an oversight or coordinating nature, be carried out by the Commission.

By memorandum of July 18, 1980, the Secretary of Defense redelegated certain authority to the Secretary of the Army and to the Commission. I have submitted a copy of that memorandum for the record.

[The information follows:]

THE DEPUTY SECRETARY OF DEFENSE,
Washington, D.C., July 18, 1980.

Memorandum for Secretaries of the Military Departments, Chairman, Joint Chiefs of Staff, Under Secretaries of Defense, Assistant Secretaries of Defense, General Counsel, Assistants to the Secretary of Defense, Director, Defense Intelligence Agency, Department of Defense Representative for Panama Canal Treaty Affairs.

Subject: Implementation of Executive Order 12215, "Delegation of Panama Canal Functions".

On May 27, 1980, the President signed Executive Order 12215, which delegates to the Secretary of Defense certain functions vested in the President by the Panama Canal Code (76A Stat. 1) and the Panama Canal Cat of 1979 (93 Stat. 452; 22 U.S.C. 3601). By this memorandum, I am reaffirming the responsibilities of the Secretary of the Army and the DoD Representative for Panama Canal Treaty Affairs and I am delegating the following functions relating to the Panama Canal.

With respect to the authorities herein delegated, matters of interest to the Office of the Secretary of Defense shall be coordinated with the DoD Representative for Panama Canal Treaty Affairs. The Representative for Panama Canal Treaty Affairs shall clear matters of treaty implementation policy with the Assistant Secretary of Defense, International Security Affairs (ISA).

The following authorities are delegated to the Secretary of the Army as the senior Defense official involved in the management and operation of the Canal:

The function vested in the Secretary of Defense by Section 1102(c) of the Panama Canal Act of 1979 (93 Stat. 457; 22 U.S.C. 3612) with respect to approval of regulations adopted by the Board of the Panama Canal Commission to govern the Board's activities.

The function vested in the President by Section 1212(d)(1) of the Panama Canal Act of 1979 (93 Stat. 464; 22 U.S.C. 3652(d)(1)), and delegated to the Secretary of Defense by Section 1-102 of Executive Order 12215, to exclude employees of, or positions within, the Department of Defense from coverage under any provision of subchapter II of Chapter 2 of Title I of the Panama Canal Act of 1979.

The function vested in the Secretary of Defense by Section 1-202 of Executive Order 12215 to approve schedules of basic pay adopted by the head of each agency pursuant to Section 1215 of the Panama Canal Act of 1979 (93 Stat. 465; 22 U.S.C. 3655) and regulations governing other matters relating to pay and employment practices.

The functions vested in the Secretary of Defense by Section 1-201 of the Executive Order 12215, with respect to consultations with other agencies with respect to the development of compatible or unified systems for basic pay and employment practices under subchapter II of Chapter 2 of Title I of the Panama Canal Act of 1979 (93 Stat. 463; 22 U.S.C. 3651).

The function vested in the Secretary of Defense by Section 1208 of the Panama Canal Act of 1979 (93 Stat. 463; 22 U.S.C. 3648) to designate, pursuant to paragraph 3 of Article VIII of the Panama Canal Treaty of 1977, the individuals who shall enjoy the privileges and immunities accorded to diplomatic agents and their dependents.

The authority vested in the President by Section 1223(a) of the Panama Canal Act of 1979 (93 Stat. 467; 22 U.S.C. 3663(a)), and delegated to the Secretary of Defense by Section 1-203 of Executive Order 12215, to coordinate the policies and activities of agencies.

The function vested in the Secretary of Defense by Section 1302(c)(2) of the Panama Canal Act of 1979 (93 Stat. 478; 22 U.S.C. 3712(c)) to estimate the amount of revenues deposited in the Panama Canal Commission Fund at the time of the budget request for the Panama Canal Commission.

The functions vested in the President by Section 1502(a) of the Panama Canal Act of 1979 (93 Stat. 488; 22 U.S.C. 3782(a)), and delegated to the Secretary of Defense by Section 1-106 of Executive Order 12215, relating to transfers between agencies.

The functions vested in the President by Sections 82 (with respect to appointment and assignment of magistrates, constables, and other employees) and 86 (with respect to regulations for magistrates courts) of Title 3 of the Panama Canal Code (76A Stat. 54 and 55, respectively; 3 P.C.C. 82 and 86, respectively), and delegated to the Secretary of Defense by Section 1-306 of Executive Order 12215.

The function vested in the Secretary of Defense by Section 1102(a) of the Panama Canal Act of 1979 (93 Stat. 457; 22 U.S.C. 3612) to direct the votes of Members of the Board of the Panama Canal Commission who are nationals of the United States.

The following function is delegated to the Commander-in-Chief of the United States Southern Command:

The function vested in the President by Section 1701 of the Panama Canal Act of 1979 (93 Stat. 492; 22 U.S.C. 3801), and delegated to the Secretary of Defense by Section 1-104 of Executive Order 12215, with respect to regulations applicable within the areas and installations in Panama that are made available to the United States pursuant to the Agreement in Implementation of Article IV (Protection and Defense) of the Panama Canal Treaty of 1977.

The following functions are delegated to the Panama Canal Commission (PCC) and, except as I may subsequently determine otherwise, these functions are delegated without limitation and do not require any prior approval outside the PCC:

The authority of the President under Section 1104 of the Panama Canal Act of 1979 (93 Stat. 457; 22 U.S.C. 1114), and delegated to the Secretary of Defense by Section 1-302 of Executive Order 12215, to fix the compensation and to define the authorities and duties of the Deputy Administrator and the Chief Engineer.

The functions vested in the President by Sections 1418 (with respect to the establishment of a Board of Local Inspectors of the Panama Canal Commission), 1801 (with respect to Canal regulations), and 2206(b)((with respect to termination of a magistrate's court) of the Panama Canal Act of 1979 (93 Stat. 487, 492, and 495, respectively; 22 U.S.C. 3778, 3811, and 3844(b), respectively) which are delegated to the Secretary of Defense by Section 1-303 of Executive Order 12215.

The authority of the President under Section 1701 of the Panama Canal Act of 1979 (93 Stat. 492; 22 U.S.C. 3801), delegated to the Secretary of Defense by Section 1-304 of Executive Order 12215, with respect to regulations applicable within the areas and installations made available to the United States pursuant to the Agreement in Implementation of Article III (Canal Operation and Management) of the Panama Canal Treaty of 1977.

Except to the extent heretofore delegated, or for which the Secretary of the Army has approval authority, the functions vested in the President pursuant to subchapter II of Chapter 2 of Title I of the Panama Canal Act of 1979 (93 Stat. 463; 22 U.S.C. 3651), and delegated to the Secretary of Defense by Section 1-308 of Executive Order 12215, dealing with wage and employment practices, are hereby delegated to the Panama Canal Commission.

In exercise of the authority vested in me by Section 1-307 of Executive Order 12215, the administration of subchapter 1 of Chapter 81 of Title 5 of the United States Code is transferred to the Panama Canal Commission so far as employees of the Panama Canal Commission are concerned. The Panama Canal Commission is authorized to pay the compensation provided by subchapter 1 from appropriations for the Panama Canal Commission. The Panama Canal Commission is authorized to waive, at its discretion, the making of the claim required by Section 8121 of Title 5 in the case of compensation to an employee of the Panama Canal Commission for temporary disability, either total or partial.

The following functions vested in the Secretary of Defense will not be redelegated:

The function vested in the Secretary of Defense by Section 1-101 of Executive Order 12215 to develop for the President's consideration, pursuant to Section 3(d) of the Panama Canal Act of 1979 (93 Stat. 456; 22 U.S.C. 3602(d)), an appropriate request for legislation to amend, repeal or add provisions of law as appropriate in light of experience under the Panama Canal Treaty of 1977. The Secretary of the Army, however, is requested to develop and recommend such a legislative request by June 1, 1981.

The function vested in the President by Section 1243(c)(1) of the Panama Canal Act of 1979 (93 Stat. 474; 22 U.S.C. 3681(c)(1)), and delegated to the Secretary of Defense by Section 1-105 of Executive Order 12215, with respect to purchase of annuities for the benefit of certain U.S. government employees in Panama.

The function vested in the President by Section 2401 of the Panama Canal Act of 1979 (93 Stat. 495; 22 U.S.C. 3851), and delegated to the Secretary of Defense by Section 1-105 of Executive Order 12215, to exercise during the thirty-month transition period any authority necessary for the exercise of rights and responsibilities of the United States specified in Article XI of the Panama Canal Treaty of 1977.

The function vested in the President by Section 1281(b) of Title 6 of the Panama Canal Code (76A Stat. 455), and delegated to the Secretary of Defense by Section 1-305 of Executive Order 12215, to prescribe and amend regulations made available to the United States pursuant to the Panama Canal Treaty of 1977 and implementing agreements.

This memorandum cancels all prior delegations of functions by the Secretary or Deputy Secretary of Defense with respect to Executive Orders on the Panama Canal and with respect to the Panama Canal Act of 1979.

W. GRAHAM CLAYTOR, Jr.

Mr. BLUMENFELD. You will see that those coordinating and oversight functions were vested in the Secretary of the Army who has redelegated them to me.

With respect to appointment of the Board, in accordance with section 1102 of Public Law 96-70, the Board of the Commission has been appointed by the President and the U.S. members have been confirmed by the Senate. As you are aware, I am the designee of the Secretary of Defense. The other U.S. members appointed and confirmed are named, and a brief biographical description of them is given, in my written statement. These members meet the requirements of Public Law 96-70 in terms of those Board positions where specific backgrounds were required.

With respect to the oath of office, the United States and Panamanian members executed written affidavits, prior to formally assuming office, to faithfully discharge their duties as Board members.

In May, the Panamanian members were sworn in by the Deputy Administrator, a U.S. official designated in writing to do so. The U.S. members were sworn in on June 1. Thus, on June 1, 1980, the Board was duly constituted.

With respect to actions by the Board of Directors thus far, you are aware that as the Secretary of Defense designee on the Board of the Commission, I can, pursuant to Public Law 96-70, direct the vote of the U.S. majority on the Board.

The Board convened for the first time in Panama on June 2. At the first session I was elected Chairman of the Board.

Principal items on the agenda of the first meeting included overview briefings on personnel and financial matters, a review of the actions taken by the Commission through May, adoption of the Board regulations—copies of which have been provided to your committee—establishment of Board committees to facilitate doing business and preliminary discussion of a code of conduct.

That first meeting, I believe, established a sound framework for future operations.

In my role as the individual responsible for oversight of the Commission on behalf of the Secretary of Defense, I have approved the regulations adopted by the Board at its first meeting.

A second Board meeting, also held in Panama, was held on July 21 and 22. At this meeting, the Board approved the minutes of the first meeting and adopted a code of conduct as required by section 1112 of the Panama Canal Act of 1979.

Copies of this code of conduct are available to the committee. Copies of the minutes of the first meeting have already been provided and, as I mentioned, I will routinely provide copies of Board-approved minutes to both this committee and to the Senate Armed Services Committee.

At its second meeting, the Board also reviewed and approved for submission to OMB the budget proposal for fiscal year 1982.

Since this proposal is still subject to review and approval by the President, I will limit my comments with regard to it to advising the committee that it anticipates no toll increase from fiscal year 1981. As you know, the fiscal year 1981 budget, in turn, proposes no toll increase from fiscal year 1980.

I would like to take this opportunity to advise the committee that to date the binational Board has approached its task with a serious intent and resolve to improve canal operations, both now and in the future, and to do so in a spirit of cooperation.

The Board recognizes it is responsible for policymaking and supervision of the Panama Canal Commission. I can assure you this unique body will carry out those responsibilities in a fashion fully consistent with the treaty and Public Law 96-70.

The question of whether the Board or the Administrator should exercise the authority vested in the Commission by the Panama Canal Act and by the President's Executive order was a major discussion item at the second Board meeting held last week. It will be on the agenda for the third meeting scheduled for October.

The authority to establish and regulate the Panama Canal Employment System has been delegated through the Secretary of Defense to the Panama Canal Commission. The Commission staff is in the final stages of coordinating the draft Panama Canal Employment System and The document is scheduled to be presented to the Board Personnel Committee in October.

In this connection, I believe the committee is aware that I also serve as Chairman of the Panama Area Personnel Board which is responsible for coordinating the personnel and wage practices of all participating agencies. The other members of this Board are the commander-in-chief of the U.S. Southern Command and the Administrator of the Commission.

In summary, Mr. Chairman, I am confident that the actions of the executive branch to date have been fully consistent with the letter and spirit of the treaty and with the requirements mandated by the Congress in Public Law 96-70.

The task of reorganizing the Panama Canal enterprise, while simultaneously adjusting to an appropriated fund form for the agency, has been and continues to be a challenging task. However, I believe we have accomplished the required actions in an effective way.

Mr. Chairman, I am accompanied today by the Administrator of the Panama Canal Commission, Mr. Dennis P. McAuliffe, and the Secretary, Mr. Michael Rhode, Jr. I ask they join me at the witness table as I respond to any questions the committee might have.

Mr. **Hubbard**. Thank you very much, Hon. Michael Blumenfeld.

We would ask that these two distinguished gentlemen join you, please, at the table for possibly helping in answering our questions.

Formerly Colonel Rhode was assistant to Secretary Blumenfeld.

The first question:

What is the basis for the Board's adoption of the name Board of Directors?

Mr. **Blumenfeld**. As I tried to spell out in my preface, the basis is in the treaty, and in the lack of any requirement in Public Law 96-70 that any other name be adopted, the Board members preferred that term. I believe it is a matter of indifference from a substantive standpoint as to which name was adopted; and we adopted the term "Board of Directors."

It implies no wish or intent to return to a corporate form of organization.

Mr. **Bauman**. May I ask a question on that point? I am not so sure your answer gives me much pause, when compared with the deliberations of the Board in the June meeting and the regulations which you issued to carry out the intent of the law and the treaties.

If you read "Board of Directors" together with the Panamanians' statement as to what their attitude toward Public Law 96-70 is, it seems to me it is quite clear the Panamanian members, as expressed in President Royo's letters to President Carter, particularly the January 9 letter, which was quoted at length in the statement, simply reject the terms of the public law. It is as though Panama thinks the treaty did not leave to Congress the right to set up the Commission and to pass a statute that would govern it consistent with the treaty.

Taken together with the words "board of directors" and the understanding from Panama's side that the Board is the policy-making body, it seems to simply say that Congress has little or no role in this other than to provide the money, and that the Board will make the policy decisions and that you are the Board of Directors, in the strongest possible interpretation of that term.

Mr. **Blumenfeld**. Mr. Bauman, I would urge once again that you pay more attention to what the Commission does than to what the

Panamanian Board members say. They have, as does the Panamanian Foreign Minister, certain internal political needs which require certain statements to be made.

What the Commission does, how the Board operates under my Chairmanship as the Secretary of Defense designee, who controls the vote of the Board, and therefore the actions of the Board on any issues that come before it, will show that we are in full compliance with Public Law 96-70. That compliance does not require that each document advert to Public Law 96-70.

Mr. **Bauman**. Well, I would accede that that is the case, that you don't have to make reference to the provisions of the law.

The treaty and the law both govern the operations.

My concern is that if the attitude of one side, not just rhetoric for internal consumption in Panama, but the attitude of the Panamanians is that the law can be disregarded and the American feeling is to let them talk, and not resolve the matter because it would be diplomatically improvident to do so, then I can't think of a worse situation.

It seems to me the United States should make plain from the beginning what our position is not just with bland assurances and neither in any sort of way to invite confrontation, but simply to make the statement.

I see nowhere in the exchanges between President Carter and President Royo or in the deliberations of your Board so far language upholding Public Law 96-70.

You have come here today and told us flatly what your intention is. It seems to me if you can tell a committee of Congress some understanding or statement that will be reported in the Panamanian press anyway, you might as well lay down the U.S. position in the Board meetings, too, so there is no misunderstanding of what the Board's role is.

I don't want false expectations raised about the Boards role when neither the treaty nor the law permits such interpretations.

Thank you, Mr. Chairman.

Mr. **Hubbard**. President Royo's letter of January 9 to President Carter attaches substantial significance to the fact that Public Law 96-70 does not describe the Board as a Board of Directors.

Is the action of the Board a recognition of the validity of President Royo's criticism of the law on that point?

Mr. **Blumenfeld**. No, sir. There has not been a recognition of any aspect of President Royo's critique of Public Law 96-70.

As I tried to say, the choice of the term is one which was open to us under the treaty and under the legislation, and a choice which we made. This does not in any way represent a confirmation of President Royo's attack upon the legislation.

Mr. **Hubbard**. Mr. Blumenfeld, what is the basis for the statement in section 1.1 of the regulations that responsibility for policymaking and supervision of the Commission is vested in the Board, article III(a) of the Panama Canal Treaty of 1977?

Mr. **Blumenfeld**. The basis with the treaty is article III. This is also consistent with Public Law 96-70, in terms of the President's authority with respect to the Commission being exercised not by but through the Secretary of Defense. Those aspects of authority which have been delegated to the Commission are in full compliance with Public Law 96-70.

Mr. **Hubbard**. Mr. Blumenfeld, why do the regulations fail to refer at any point to Public Law 96-70 which establishes the Board and defines its function as an agency in the executive branch of the U.S. Government?

Again, why do the regulations fail to refer at any point to Public Law 96-70?

Mr. **Blumenfeld**. Mr. Chairman, this is related to the question asked by Mr. Bauman a moment ago. There have been in the Board discussions numerous occasions on which the certainty that the Panama Canal Commission is a U.S. Government agency has been reaffirmed to the Panamanians.

The absence of reference to the law is not an indicatoı that these regulations are in any way inconsistent with the law. As I said to Mr. Bauman, there is no requirement in the law that the law be adverted to in documents so long as the results of the documents—the policies and the decisions—are in compliance with Public Law 96-70. They have been so far, and they will continue to be so.

Mr. **Hubbard**. Congressman Bauman?

Mr. **Bauman**. If I may follow up on that point, again I have great concern about a specific provision in your regulations, article I, section 1.3, subparagraph (b), in which the board seems to be creating its own powers; and you say that the Board of Directors may appoint others who shall have such authority, and perform such duty's as the Board of Directors may prescribe from time to time.

I am not aware that the Board of Directors are granted—either under the treaty or Public Law 96-70—any powers to define their duties within the confines of the treaty and section 1102 and other sections of Public Law 96-70, because these are is your charters for authority and power.

It seems to me you are attempting by regulations to draw a future source of authority out of the thin air, and it seems to me that that will also give rise to all kinds of problems, not only with the Congress, but conceivably with the Panamanian Government, depending upon how this authority is used.

It just seems to me that this is made out of whole cloth. I don't know who the attorneys were who drew up your regulations. They might not have known that this one phrase would have had attached to it a rather large flag and a rather loud bell.

What is the authority for this section? Where do you get out of the treaty or the law that the Board can describe its own authority and powers?

Mr. **Blumenfeld**. Out of the treaty; I think article III is fairly straightforward. Out of the law; I think that delegations to the Secretary of Defense, through him to the Secretary of the Army, and to the Commission have occurred in order to insure adequate supervision and coordination of the tasks involved in running the canal.

As is always the case in any delegation, it is the authority that is delegated, not the responsibility.

I must stress this: I can, and its is my role as the representative of the Secretary of Defense, and as the Chairman of the Board who has the power to direct the vote of the U.S. majority, to assure that those actions taken by the Board are in full consonance with the policy of the U.S. Government.

I intend to do that.

Public Law 96-70 specifically vests in the Commission certain authorities; the vesting in the Commission of more general authorities through the President's delegation, through the President's Executive order, and the subsequent delegation of the Secretary of Defense are from a legal standpoint, consistent with the terms of Public Law 96-70. I don't believe the Attorney General would have signed off on that delegation were it not consistent.

As a matter of practical policy, the hats that I wear as the Secretary of Defense's designee on the Board and as his agent for overseeing the operation make it quite clear that the Commission is not going to be adopting policies that are in any way in conflict with U.S. policy.

Mr. BAUMAN. Mr. Chairman, if I may pursue that, do I understand your interpretation of that section of your rules that that grant of authority and power to the board to perform their duties is circumscribed by both the treaty and the laws and that it will be your intention to oppose, through the power of the Secretary of Defense to instruct all five U.S. Board members, any extensions beyond what your interpretation of the treaty and the law allows?

Mr. BLUMENFELD. I am not sure I follow the question exactly, but let me say that I intend that our actions will be consistent with the treaty and they will be consistent with Public Law 96-70.

The power of the Secretary of Defense to approve regulations adopted by the Board was delegated by him to me. I have approved those regulations on his behalf.

Mr. BAUMAN. Let me give you an example of what would concern me. I am not sure what action you took in your July meeting. It may be my concern has been addressed. In your first meeting though, there was a disinclination on the part of the Panamanians to appoint a chief engineer. Was that taken care of at the subsequent meeting?

Mr. BLUMENFELD. No, sir. We have not appointed a chief engineer. The sense of the discussion at the first meeting was that as the Long Range Canal Improvements Committee—which we established at that first meeting—became more familiar with the long-term planning process for capital improvement, as well as for maintenance, that the role, the duties, the qualification requirements of this chief engineer position would become clearer and that the Board would act upon it at a later date.

Mr. BAUMAN. I noticed in the minutes the reluctance on the part of the Panamanians to name such an engineer for whatever reason. The matter was deferred to the July meeting; now it is deferred further.

There is a case where the Congress debated whether we should have a chief engineer or not; decided that we should, and outlined his role to some degree in the law and the report.

If a year were to pass and no engineer were to be named, it seems to me the board is, in fact, in that case exceeding its authority and it raises the question of whether the U.S. majority is going to honor the terms of the law or take unto itself, under new article I powers, what it decides the law will be.

I just cite that as an example of the kind of problem that is going to arise if the Board's attitude is that it is its own authority, it will describe its own powers as it goes along, and ignore the law because the treaty obviously is very flexible in its interpretation. The law is far more specific, however unsettling that is to the Panamanians.

Mr. **Blumenfeld**. I understand your point. Let me say with respect to the chief engineer that there is no requirement for a time certain by which the chief engineer must be appointed.

Mr. **Hubbard**. Mr. Blumenfeld, section 1202 authorizes the Panama Canal Commission to appoint, fix the compensation of, and define the authority and duties of officers, employees, agents, and attorneys.

What is the basis for the assumption of that authority by the Board in section 1.3?

Mr. **Blumenfeld**. If you will give me a moment, Mr. Chairman.

Mr. **Hubbard**. Sure.

Mr. **Blumenfeld**. Thank you, Mr. Chairman.

Section 1202, as with other sections of the law, requires a duty of the Panama Canal Commission. There is a question as to which of those powers will be undertaken by the Administrator and which will be reserved to the board.

The law is not specific in that aspect. The discussions that were begun at our second meeting of the Board and will continue at the third meeting attempt to delegate to the Administrator those authorities which belong with the Administrator and to reserve to the Board those which the Board believes should be held by the Board and not delegated to the administrator.

We believe that the language of the act, when it refers to the Commission, leaves it open for certain authorities to be delegated from the Board to the Administrator and certain others to be reserved to the Board.

Mr. **Hubbard**. That last sentence, would you repeat that?

Mr. **Blumenfeld**. That the act, in its reference to the Panama Canal Commission, is silent with respect to whether that power was to be exercised by the Administrator or by the Board. Both obviously compose the Commission, and the decision as to which powers the Board will keep to itself and which it will delegate to the Administrator remains to be made; but the act refers to the Commission which, of course, could be either the Administrator or the Board.

Mr. **Hubbard**. Mr. Blumenfeld, what is the basis for substitution of the term "appointment affidavit" in section 1.4 of the regulations for the "oath" required by section 1102(b) of Public Law 96-70?

Repeating: What is the basis for the substitution of the term "appointment affidavit" in section 1.4 of the regulations for the term "oath" required by section 1102(b) of Public Law 96-70?

Mr. **Blumenfeld**. I would refer, Mr. Chairman, to the document which indeed each of the U.S. members, including myself, signed when taking that oath of office, which is headed "Appointment Affidavits."

We believe—and we have counsel's advice—that the use of the term "affidavit" is by no means exceptionable, and indeed, there is a note at the bottom of the form which says that among other things the words "so help me God" in the oath and the word "swear" should be stricken out when the appointee elects to affirm rather than to swear to the affidavit.

So we think there is clear basis for the terminology of "affidavit."

Mr. **Hubbard**. Would you please provide the subcommittee with a copy of the affidavit?

Mr. **Blumenfeld**. Yes, indeed.

Mr. **Hubbard**. And also a copy of the oaths taken by the Panamanian members?

Mr. **Blumenfeld**. Yes, indeed. I will give the affidavits, done both for the U.S. members and for the Panamanian members.

The Panamanian members' affidavits were administered by the Deputy Administrator, a U.S. Agency official who had been designated in writing to do so by the Administrator, and therefore in conformity with U.S. law.

Mr. **Hubbard**. Thank you.

Later you will provide a copy of the affidavits and oaths referred to?

Mr. **Blumenfeld**. Certainly.

[The following was received for the record:]

Panama Canal Commission,
Washington, D.C., July 28, 1980.

Hon. Carroll Hubbard,
Chairman, Panama Canal Subcommittee,
House of Representatives, Washington, D.C.

Dear Mr. Chairman: In the course of the hearing this morning conducted by the Panama Canal Subcommittee, several requests were made of Mr. Blumenfeld to provide certain documents to the committee. These were: Copies of the Appointment Affidavits signed by members of the Board of the Commission; and delegation of authority concerning duties of the Deputy Administrator.

Both documents are attached.

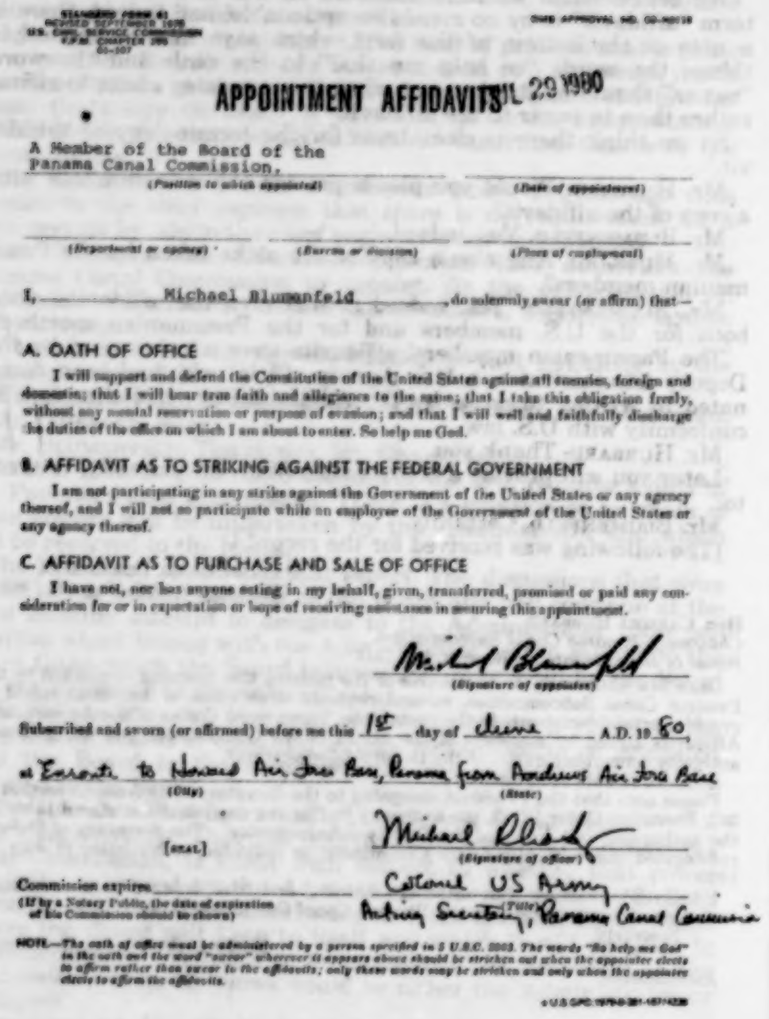
Please note that the President delegated to the Secretary of Defense in section 1-302, Executive Order 12215, the authority to "fix the compensation of and to define the authorities and duties of the Deputy Administrator". The Secretary of Defense redelegated this authority to the Commission as indicated in his letter of July 18, 1980.

I enjoyed our short chat after the hearing and look forward to a continuing exchange of views concerning the Panama Canal Commission.

Sincerely,

Michael Rhode, Jr., *Secretary.*

Attachments.



STANDARD FORM 61
REVISED SEPTEMBER 1970
U.S. CIVIL SERVICE COMMISSION
F.P.M. CHAPTER 295
61-107

OMB APPROVAL NO. [illegible]

APPOINTMENT AFFIDAVITS

JUL 29 1980

A Member of the Board of the Panama Canal Commission, (Position to which appointed)

(Date of appointment)

(Department or agency) (Bureau or division) (Place of employment)

I, Michael Blumenfeld, do solemnly swear (or affirm) that—

A. OATH OF OFFICE

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

B. AFFIDAVIT AS TO STRIKING AGAINST THE FEDERAL GOVERNMENT

I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof.

C. AFFIDAVIT AS TO PURCHASE AND SALE OF OFFICE

I have not, nor has anyone acting in my behalf, given, transferred, promised or paid any consideration for or in expectation or hope of receiving assistance in securing this appointment.

Michael Blumenfeld
(Signature of appointee)

Subscribed and sworn (or affirmed) before me this 1st day of June A.D. 19 80,

at Enroute to Howard Air Force Base, (City) Panama from Andrews Air Force Base (State)

[SEAL]

Michael Rhode
(Signature of officer)

Commission expires
(If by a Notary Public, the date of expiration of his Commission should be shown)

Colonel US Army
(Title)
Acting Secretary, Panama Canal Commission

NOTE.—*The oath of office must be administered by a person specified in 5 U.S.C. 2903. The words "So help me God" in the oath and the word "swear" wherever it appears above should be stricken out when the appointee elects to affirm rather than swear to the affidavits; only these words may be stricken and only when the appointee elects to affirm the affidavits.*

U.S. GPO: [illegible]

STANDARD FORM 61
REVISED SEPTEMBER 1970
U.S. CIVIL SERVICE COMMISSION
F.P.M. CHAPTER 295
61-107

OMB APPROVAL NO. 50-R0116

APPOINTMENT AFFIDAVITS

A Member of the Board of the Panama Canal Commission.
(Position to which appointed)

(Date of appointment)

(Department or agency)

(Bureau or division)

(Place of employment)

I, John Alden Bushnell, do solemnly swear (or affirm) that—

A. OATH OF OFFICE

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

B. AFFIDAVIT AS TO STRIKING AGAINST THE FEDERAL GOVERNMENT

I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof.

C. AFFIDAVIT AS TO PURCHASE AND SALE OF OFFICE

I have not, nor has anyone acting in my behalf, given, transferred, promised or paid any consideration for or in expectation or hope of receiving assistance in securing this appointment.

John A. Bushnell
(Signature of appointee)

Subscribed and sworn (or affirmed) before me this 1st day of June A.D. 1980,

at Enroute to Howard Air Force Base from Andrews Air Force Base
(City) (State)

[SEAL]

Michael Rhode
(Signature of officer)

Commission expires
(If by a Notary Public, the date of expiration of his Commission should be shown)

Colonel, US Army
Acting Secretary, Panama Canal Commission

NOTE.—*The oath of office must be administered by a person specified in 5 U.S.C. 2903. The words "So help me God" in the oath and the word "swear" wherever it appears above should be stricken out when the appointee elects to affirm rather than swear to the affidavits; only these words may be stricken and only when the appointee elects to affirm the affidavits.*

☆U.S. GPO 1979-0-281-157/4238

STANDARD FORM 61
REVISED SEPTEMBER 1970
U.S. CIVIL SERVICE COMMISSION
F.P.M. CHAPTER 295
61-107

OMB APPROVAL NO. 50-R0118

APPOINTMENT AFFIDAVITS

A Member of the Board of the Panama Canal Commission.
(Position to which appointed)

(Date of appointment)

(Department or agency)

(Bureau or division)

(Place of employment)

I, John W. Clark, do solemnly swear (or affirm) that—

A. OATH OF OFFICE

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

B. AFFIDAVIT AS TO STRIKING AGAINST THE FEDERAL GOVERNMENT

I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof.

C. AFFIDAVIT AS TO PURCHASE AND SALE OF OFFICE

I have not, nor has anyone acting in my behalf, given, transferred, promised or paid any consideration for or in expectation or hope of receiving assistance in securing this appointment.

John W. Clark
(Signature of appointee)

Subscribed and sworn (or affirmed) before me this 1st day of June A.D. 19 80,

at Enroute to Howard AFB, Panama, from Andrews Air Force Base.
(City) (State)

Michael Rhode
(Signature of officer)

[SEAL]

Commission expires
(If by a Notary Public, the date of expiration of his Commission should be shown)

Colonel, US Army
Acting Secretary, Panama Canal Commission
(Title)

NOTE.—*The oath of office must be administered by a person specified in 5 U.S.C. 2903. The words "So help me God" in the oath and the word "swear" wherever it appears above should be stricken out when the appointee elects to affirm rather than swear to the affidavits; only these words may be stricken and only when the appointee elects to affirm the affidavits.*

☆U.S.GPO:1979-0-281-187/4236

STANDARD FORM 61
REVISED SEPTEMBER 1970
U.S. CIVIL SERVICE COMMISSION
F.P.M. CHAPTER 295
61-107

OMB APPROVAL NO. 50-R0118

APPOINTMENT AFFIDAVITS

A Member of the Board of the Panama Canal Commission. (Position to which appointed)

(Date of appointment)

(Department or agency) (Bureau or division) (Place of employment)

I, Clifford Bradley O'Hara, do solemnly swear (or affirm) that—

A. OATH OF OFFICE

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

B. AFFIDAVIT AS TO STRIKING AGAINST THE FEDERAL GOVERNMENT

I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof.

C. AFFIDAVIT AS TO PURCHASE AND SALE OF OFFICE

I have not, nor has anyone acting in my behalf, given, transferred, promised or paid any consideration for or in expectation or hope of receiving assistance in securing this appointment.

Clifford B. O'Hara
(Signature of appointee)

Subscribed and sworn (or affirmed) before me this 1st day of June A.D. 1980,

at Enroute to Howard Air Force Base, Panama (City) from Andrews Air Force Base (State)

[SEAL]

Michael Rhode
(Signature of officer)

Commission expires
(If by a Notary Public, the date of expiration of his Commission should be shown)

Colonel, US Army
(Title)
Acting Secretary, Panama Canal Commission

NOTE.—*The oath of office must be administered by a person specified in 5 U.S.C. 2903. The words "So help me God" in the oath and the word "swear" wherever it appears above should be stricken out when the appointee elects to affirm rather than swear to the affidavits; only these words may be stricken and only when the appointee elects to affirm the affidavits.*

U.S. GPO: 1978-0-261-167/4238

STANDARD FORM 61
REVISED SEPTEMBER 1970
U.S. CIVIL SERVICE COMMISSION
F.P.M. CHAPTER 295
61-107

OMB APPROVAL NO. 50-R0118

APPOINTMENT AFFIDAVITS

A Member of the Board of the Panama Canal Commission. (*Position to which appointed*) ________ (*Date of appointment*)

________ (*Department or agency*) ________ (*Bureau or division*) ________ (*Place of employment*)

I, William Sidell, do solemnly swear (or affirm) that—

A. OATH OF OFFICE

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

B. AFFIDAVIT AS TO STRIKING AGAINST THE FEDERAL GOVERNMENT

I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof.

C. AFFIDAVIT AS TO PURCHASE AND SALE OF OFFICE

I have not, nor has anyone acting in my behalf, given, transferred, promised or paid any consideration for or in expectation or hope of receiving assistance in securing this appointment.

William Sidell
(*Signature of appointee*)

Subscribed and sworn (or affirmed) before me this 1st day of June A.D. 19 80,

at Enroute to Howard Air Force Base (*City*) Panama from Andrews Air Force Base (*State*)

[SEAL.]

Michael Rhode
(*Signature of officer*)

Commission expires ________
(If by a Notary Public, the date of expiration of his Commission should be shown)

Colonel, US Army
(*Title*)
Acting Secretary, Panama Canal Comm

NOTE.—*The oath of office must be administered by a person specified in 5 U.S.C. 2903. The words "So help me God" in the oath and the word "swear" wherever it appears above should be stricken out when the appointee elects to affirm rather than swear to the affidavits; only these words may be stricken and only when the appointee elects to affirm the affidavits.*

☆U.S.GPO:1979-0-281-187/4236

APPOINTMENT AFFIDAVIT

Member of the Board of the
Panama Canal Commission

I, Ricardo A. Rodriguez, do solemnly affirm that I will well and faithfully discharge the duties of the office on which I am about to enter.

Ricardo A. Rodriguez

Affirmed before me this 3d. day of May, 1980, at Panama, Republic of Panama.

Fernando Manfredo, Jr.
Deputy Administrator

APPOINTMENT AFFIDAVIT.

Member of the Board of the
Panama Canal Commission

I, Roberto M. Heurtematte E.,do solemnly affirm that I will well and faithfully discharge the duties of the office on which I am about to enter.

Roberto M. Heurtematte E.

Affirmed before me this 2d. day of May, 1980, at Panama, Republic of Panama.

Fernando Manfredo, Jr.
Deputy Administrator

APPOINTMENT AFFIDAVIT

Member of the Board of the
Panama Canal Commission

I, Edwin Fabrega V., do solemnly affirm that I will well and faithfully discharge the duties of the office on which I am about to enter.

Edwin Fabrega V.

Affirmed before me this 21 day of May, 1980, at Panama, Republic of Panama.

Fernando Manfredo, Jr.
Deputy Administrator

APPOINTMENT AFFIDAVIT

Member of the Board of the
Panama Canal Commission

I, Tomás Paredes R., do solemnly affirm that I will well and faithfully discharge the duties of the office on which I am about to enter.

Paredes

Tomás Paredes R.

Affirmed before me this 2d day of May, 1980, at Panama, Republic of Panama.

Fernando Manfredo, Jr.
Deputy Administrator

Mr. **Hubbard**. Congressman Bauman.

Mr. **Bauman**. Following up on the business of an affidavit or oath, that was one contention made repeatedly by those opposed to the treaty and implementing legislation, that it was impossible for a Panamanian citizen to be an official of a U.S. Government agency, and that the question of oath-taking would be one that would be addressed in the courts, which might deny the legal basis for such an arrangement.

I notice, too, in your deliberations that the Panamanian members objected to the imposition of a code of conduct, at least in the first meeting. You now mentioned you addressed that in the second meeting.

What is the legal attitude that the U.S. Directors have taken toward the obligations of the Panamanian members of this Board?

Are they in fact subject to U.S. law as Public Law 96-70 indicates they should be? Or are you treating them in a special status, and is the affidavit a reflection of that attitude?

Mr. **Blumenfeld**. With respect to the code of conduct, the enforcement of any of the standards of behavior that the code of conduct laid out are a matter for subsequent negotiation, government to government.

The Board adopted a code of conduct which spells out standards of behavior both for employees and for Board members. The adoption of that code by the Board does not one way or the other affect the applicability of U.S. law to Board members or to employees.

There is a statement, as you have seen, by the Panamanian Foreign Minister and certain Board members that U.S. law does not apply. The Board, however, adopted that code. By its adoption, it does not affect the difference that may exist in interpretation between the U.S. Board members and the Panamanian Board members to what extent there is reach of U.S. law into the Republic of Panama.

Mr. **Bauman**. So there was no dissension at the time regarding the code of conduct by the Panamanian members? Did they abstain? Did they support the position?

Mr. **Blumenfeld**. There was a five to four vote on both portions of the code, portion one dealing with employees and portion two dealing with the Board.

Mr. **Bauman**. There was no significant indication that they refused to accept it?

Mr. **Blumenfeld**. The Panamanians indicated that with respect to themselves as Board members, they did not believe that the Commission could adopt a code which would require standards of behavior of them.

It was the U.S. position that the code would and should set up standards for behavior of the Board members. It was our recognition that the enforcement of those standards could not follow from adoption of the code, but would have to be, as spelled out in Public Law 96-70, the subject of future negotiation between the two countries.

Mr. **Bauman**. As an aside on the code matter, it is true we left its enforcement an open-ended question because we knew we had no real enforcement authority over Panamanian nationals.

I think the congressional consensus was we did have authority to set a code by which they could be judged. The question was whether they would be acted against if they transgressed that code. You say your attitude is in the 5-to-4 vote that the Panamanian directors are not bound by the code?

Mr. **Blumenfeld**. That is correct. Which is not to say that they are not bound by similar ethical precepts of Panamanian law, which I do believe they find themselves bound by.

Mr. **Bauman**. Except the treaty clearly says in article III that the Panama Canal Commission and its Board—"grants and rights of the United States shall be in accordance with the treaty and provisions of United States law in carrying out the responsibilities."

So at least the authority in the treaty exists and they should be bound by that. Whether we can enforce it is something else.

Let me pass back to the question of affidavit or oath. What was it the Panamanian and American members swore to uphold in this affidavit or oath? The Constitution of the United States? The treaties? The Public Law 96-70? Or just general, good conduct standards?

Mr. **Blumenfeld**. The U.S. members said:

> I will support and defend the Constitution of the United States against all enemies, foreign and domestic. I will bear true faith and allegiance to the same. I take this obligation freely without mental reservation. I will faithfully discharge the duties of the office upon which I am about to enter.

The Panamanian affidavit read that "I do solemnly affirm I will well and faithfully discharge the duties of the office upon which I am about to enter."

Mr. **Bauman**. I don't think I have any further questions after that.

Mr. **Hubbard**. Thank you, Congressman Bauman.

Mr. Blumenfeld, what was the specific authority of the Deputy Administrator to administer this oath?

Mr. **Blumenfeld**. As an official of a U.S. Government agency designated in writing to do so by the Administrator.

Mr. **Hubbard**. What authority do you refer to for this Deputy Administrator to administer the oath?

Mr. **Blumenfeld**. Section 2903(b) of title 5 of the United States Code.

Mr. **Hubbard**. Thank you.

The next question, Mr. Blumenfeld—Mr. Carney?

Mr. **Carney**. Mr. Blumenfeld, you mentioned something about eliminating the word "God" and "swear."

Who made that determination and why?

Mr. **Blumenfeld**. That determination is at the bottom of a form called Standard Form 61, Revised September 1970, U.S. Civil Service Commission, F.P.M. Chapter 295 61-107.

It appears as a note at the bottom of the form.

Mr. **Carney**. Could you read that note again?

Mr. **Blumenfeld** [reading]:

> The oath of office must be administered by a person specified in 5 U.S.C. 2903. The words "So help me God" in the oath and the word "swear" wherever it appears above should be stricken out when the appointee elects to affirm rather than swear to the affidavits. Only these words may be stricken and only when the appointee elects to affirm the affidavits.

Mr. **Carney**. We are getting copies of that, is that correct?

Mr. **Blumenfeld**. Yes.

Mr. **Carney**. Is that common practice?

Mr. **Blumenfeld**. It is standard.

Mr. **Carney**. Standard practice now?

Thank you.

Mr. **Hubbard**. Mr. Blumenfeld, what is the authority for the provision of section 1.5(b) of the regulations that Board meetings shall not be open to the public?

Again what is the authority of the provision of section 1.5(b) of the regulations that Board meetings shall not be open to the public in view of the provisions of 5 U.S.C. 552(b) requiring open meetings by Government agencies?

Mr. **Blumenfeld**. I believe you are referring to the Government in the Sunshine Act, and I believe that the Sunshine Act requires that where a Government agency is headed by a collegial body, the majority of whose members are appointed by the President and confirmed by the Senate, those meetings shall be open and it has various other responsibilities for public disclosure.

It is our position that by virtue of the fact that two of the five U.S. Board members hold their positions in effect ex officio, and since the Justice Department has repeatedly taken the position that where there are ex officio members, they do not count toward the total that one adds up to get the majority of the agency, that there is not a majority of the members who would make the Commission subject to the Government in the Sunshine Act.

Therefore, we are not subject to it, and it was, therefore, within our ability to exclude the public from the meetings.

Mr. **Hubbard**. You believe that is wise in this day and time when the general public is so anxious to be aware and become informed as to the happenings of the agencies, especially with so much skepticism about the wisdom of the Panama Canal treaties?

Mr. **Blumenfeld**. I would sympathize with your question were it not for the fact that we are reporting regularly to the committees of Congress, including your committee, on what transpires at the Board meetings, giving you copies of the minutes.

My personal view is, I believe that the more these Board meetings can address issues that concern the operation and maintenance of the canal, and the less that they are forums for public posturing, the better run the canal is going to be. I think the exclusion of the public helps minimize those occasions upon which people will be either, (a) saying things in order to win some political points or (b) refrain from saying things because they are worried that the public or the press may find them to be silly or unjustified. I think it helps make a better Board meeting for it not to be open to the public.

Mr. **Hubbard**. Mr. Blumenfeld, how can a member of the Board supervising an agency in the executive branch of the U.S. Government act legally in accordance with instructions from a foreign government as provided, in effect, by section 1.8 of the regulations?

If you will hold your answer on that, we will go back to the meetings question prior to this.

Congressman Bauman had another point to make or a question to ask regarding that subject of the meetings of the Board not being open to the public, the meetings of the Board.

Mr. **Bauman**. The rationale you just advanced for secret meetings is one we are not unfamiliar with in the Congress. Several years ago we grappled with the same problem and decided that unless the majority of the committees for the most part specifically voted to close the meetings for certain categories of secret information, reputations of other people, and so on, that we would remain open, which was a reversal of policy.

Sure it is much easier for Government officials to deliberate in private and then announce what they have decided in public without the benefit of the deliberations, and I was struck by this provision that you have included in here of the closed meeting, and my reading of the minutes, which I found to be highly inaccurate.

I served as secretaries of boards myself over the years. I know how minutes are written. They are written to reflect a viewpoint, and they are written very carefully not to reflect any dissention or any other things except where it is absolutely required in the form of votes and motions.

I can only say that as a member of this subcommittee, I would very much like to have someone attending your meetings, giving us an independent report, independent of the U.S. Embassy and independent of your operation, just to know what is going on.

Maybe that is not appropriate.

The wider question: The legal basis you cite that ex officio, two of the members—at least yourself—are ex officio, I don't understand where you can draw on that interpretation despite other cases.

Quite clearly the law requires the President nominate five people and have them confirmed. They were in fact nominated and confirmed. Senate hearings indicate that that is the case.

Even though you are required by statute, the President, to nominate certain categories of people, it doesn't make you an ex officio member of the Board. You are a full member appointed by the President and approved by the U.S. Senate.

How do you get around the existing law the chairman has quoted? It seems to me you strain the interpretation for a purpose less than acceptable to a lot of people.

Mr. **Blumenfeld**. Let me say a couple of things, if I may.

I think there is another basis, although it is not one that I would necessarily choose to advance for exclusion under the Sunshine Act. Arguably the collegial board heading an agency which would invoke Government in the Sunshine is not a case which would exist here. It is arguable that the Commission Board does not head the Commission in the sense intended in the Government in the Sunshine Act.

As we have been discussing before, the Commission is supervised by the Board, but the Secretary of Defense, or his designee, directs the vote and the outcome of issues before the Board. I think that that circumstance may, in fact—although I am not, nor do I pretend to be a constitutional lawyer—may be another basis upon which the Government in the Sunshine Act could be found not to apply.

Let me say, though, that with respect to the minutes disguising any dissension, I think what you will find in the minutes of the second meeting and subsequent meetings is that there will not be any attempt to do that. Indeed, the Panamanian Board members will, on many occasions, ask that their specific documents reflecting their dissension with given points be appended to the minutes of the meeting and they will be there available to look at.

We are not trying to hide nor will we hide dissension. I think the decision to close the meetings was only taken in the interests of an efficient-running Board which can cover the business before it in as reasonably short a period of time as is necessary.

Given that we have three private sector members who have commitments that don't make them infinitely available for Board meetings or Board committee meetings, and the opportunity for time-consuming posturing before the public is one which I would like to minimize in the operation of the Board, it seemed to me the closing to the public accomplishes that. There are ample means to report through your committee and others the doings of the Board.

Mr. **Bauman**. Well, I for one, Mr. Chairman, would like to register my own protest at this regulation. It seems to me there are inherent difficulties in any public body with the reaction of the public to what they do. The risk that the members of that body may use it as a forum exists, but I think that had to be foreseen in this arrangement of the treaty and the law.

Quite obviously the people on both sides are responsible individuals, chosen because of their ability, one assumes, to carry out the duties of the Board.

I just don't think the expedient of time is a sufficient excuse to close the public out of the deliberations of this group.

You do have the consultative committee for broader discussion of broader policy questions; that if they want to beat each other over the head, that is the place to do it, obviously.

The substance of the actions that control the canal as an enterprise is in your Board, along with the Congress directions and the treaties' directions. To say the public be damned is a mistake.

Thank you, Mr. Chairman.

Mr. **Hubbard**. Congressman Carney?

Mr. **Carney**. Who are the two ex officio members?

Mr. **Blumenfeld**. John Bushnell and myself.

Mr. **Carney**. How was it determined that you are ex officio members?

Mr. **Blumenfeld**. As to myself as the designee of the Secretary of Defense, we construe that as an ex officio membership. I think the case is less strong with respect to John Bushnell. But at least one is very clearly an ex officio member. As such, there is no longer a majority of members, defined in the sense that the Government in the Sunshine Act defines it, so that the act is not invoked.

Mr. **Carney**. That is an awful loose interpretation in my opinion. Let me ask about these closed meetings.

Would they be closed to Members of Congress?

Mr. **Blumenfeld**. Members of Congress, as any other members of the public, could be invited by the Chairman to attend. I certainly would entertain——

Mr. Carney. What you are saying is, I would need an invitation to attend one of those meetings?

Mr. Blumenfeld. Yes, sir.

Mr. Carney. Is it the intention of the Commission or whatever you decide to call yourself to continue to aggravate the Congress?

This is just a small point, but you seem to care very little about the Congress. You are going to run it the way you want. I am just wondering, is that the intention that you are going to continue to do, or are we going to have to, every year when it comes to appropriations, fight this thing out continually?

I don't know. I certainly can't support a lot of things that are going on. I would hope—as I said before—that we wouldn't have to continue to rehash all of this, but I think it is absurd that a Member of Congress cannot attend one of those meetings without an invitation when that Member of Congress has to spend or has to appropriate money for the carrying out of the operations of the canal.

I think too the interpretation that you are an ex officio member of the committee is not what the intention of the Congress was. I am just wondering how much further this Commission—what the intentions are to continue to aggravate Members of Congress like you are doing to me right now?

I mean, you know, hopefully all of that was behind us. Evidently it is not. Evidently we are back to war again.

It is just the attitude that seems to be that Congress be damned; the American public be damned. You are not going to be able to come to our meetings. I am an ex officio member. The Congress had no intentions of making any member of the five-member delegation an ex officio member.

We wanted to have five members on that board. It is there in the public law. It is there in the treaty. Apparently you don't care what the intent of the Congress is.

I would think that the Congress can get aggravated over those situations. We are going to be continually rehashing this if it continues like that.

Mr. Blumenfeld. I would hope not. I certainly do not intend to aggravate you, Congressman Carney.

Mr. Carney. Knowing I need an invitation to attend a meeting aggravates me very much. I am sure it will aggravate one-third of my colleagues when it comes up on suspension. Let's put it that way.

Mr. Hubbard. Continuing, Mr. Blumenfeld, how can a member of a board supervising an agency in the executive branch of the U.S. Government act legally in accordance with instructions from a foreign government as provided in effect by section 1.8 of the regulations?

How can a member of a board supervising an agency in the executive branch of our Government act legally in accordance with instructions from a foreign government as provided, in effect, by section 1.8 of the regulations?

Mr. Blumenfeld. That section may not have been as artfully written as it could have been, but what it is intended to do—and I think will do—is to assure that in the Commission regulations the requirement which Congress wrote into the law that the U.S.

Board members will vote at the direction of the Chairman, the Secretary of Defense designee, that that requirement is reflected in the regulations as well as being in the law.

With respect to the Panamanian members, it reflects the fact that the Panamanian members develop a position which represents the position adopted by the Government of the Republic of Panama on any particular issue. They are representatives of the Government of Panama. But section 1.8 does not by any means imply that U.S. Board members will so vote—I believe the word "respective" there is fairly clear. What it tries to do is assure in the regulations that U.S. Board members vote at the direction of the Secretary of Defense's designee.

Mr. **Hubbard**. Mr. Blumenfeld, section 1102(c) of the Public Law 96-70 provides a quorum of the Board for transactions of business shall consist of a majority of Board members of which those present are U.S. nationals.

Section 1.7 of the regulations repeats this requirement. Since a majority of the Board is five, what is the legal basis for the provisions of section 3.1 of the regulations that between Board meetings, the executive committee may exercise all of the powers of the Board with a quorum of three of the five members?

Mr. **Blumenfeld**. With one of the members being the Chairman. Three constitute a quorum if made up of the Chairman and another U.S. member. So there was a U.S. majority. I believe the establishment of committees and the prescription of procedures for them to follow are within the inherent authority of the Board.

For example, there are emergencies, time-sensitive actions which the Board will have to take and will be unable to set up a meeting to consider the issue. The regulation that you refer to, which we adopted, indicates clearly that the full Board can affirm or alter or revoke any action that is taken by the executive committee.

We needed to provide a mechanism for actions to be taken between Board meetings. I don't believe that the Public Law 96-70 in any way precludes the establishment of such a committee to help the Board do its business.

Mr. **Hubbard**. I want to ask Mr. Whitman to ask a question at this point based upon your answers, please, Mr. Blumenfeld.

Mr. **Whitman**. I think possibly you may have misconstrued the question. I don't believe it was the intention of the chairman to question the setting up of an executive committee, but the question is, having set up the executive committee, how can that committee exercise all the powers of the Board with fewer members than that prescribed by Public Law 96-70?

Mr. **Blumenfeld**. If I may, let me get you, for the record, a legal analysis of that ability.

I think practically, pragmatically, it is clear, and I believe Congress would have intended that the Board be able to deal with an issue in a timely fashion.

It is not always possible to convene a Board meeting with a U.S. majority in attendance as quickly as one might wish because of conflicting schedules. I think the Commission has to be in a position to deal with matters which might occur; say, if there were a landslide or some emergency to be handled. It would not be the intention of the chairman to utilize this executive committee except in instances where the urgency of the action precluded the ability to have a timely Board response to the issue.

[The following was received for the record:]

Public Law 96-70 contemplates the adoption of regulations by the Board for the conduct of meetings. Section 1102(c) of Public Law 96-70 states that a quorum shall consist of a majority of the Board members (5) of which a majority of those present (3) are nationals of the United States. The terms of the law do not address an Executive Committee.

Section 3.2 of the Board Regulations creates an Executive Committee consisting of five members. A quorum of the Committee under Section 1.7 of the Regulations would consist of three members, a majority of whom (2) are nationals of the United States and one of those must be the Chairman of the Board. The Regulations state that the Executive Committee may exercise all powers of the Board arising in the ordinary course of business during the intervals between meetings of the Board.

The creation of the Committee is a logical and practical extension of the intent of the law in that it provides for continuing supervision of the Commission even when the Board is not meeting. It is contemplated that the Committee will only be called upon to act in emergency situations when time or other similar constraints do not permit the calling of a material of the full Board. As a practical matter, it is significant that no meeting may occur without the Chairman of the Board, who may direct the votes of U.S. members. Accordingly the outcome of a meeting of the Executive Committee should be consistent with the result to be anticipated had the full Board considered the issue. It is noted, moreover, that all decisions or actions taken by the Committee are subject to review and approval by the full Board. Thus, the actions of the Committee may be characterized as only interim and of an emergency nature.

We therefore believe that the provisions of the Regulations pertaining to the Executive Committee are in conformance with the intent of the Act.

Mr. **Whitman**. I think that legal opinion would be very helpful. What concerns me is not whether or not it would be desirable or a good thing or would expedite the business of the Commission, but rather whether it is authorized by the terms of the law.

Mr. **Hubbard**. Mr. Blumenfeld—excuse me.

Mr. **Bauman**. Could I have some comment, in view of your last question, as to what the role of the Administrator is, if this executive committee is needed in terms of an emergency? My concept was that the Administrator had authority to act in an emergency. The emergency fund, for instance, was created for his availability. Are you saying this executive committee has to be convened if a slide occurs or an oil spill or something that requires extraordinary expenditures occurs?

Mr. **Blumenfeld**. I would expect yes, the Administrator would want to get the Board's blessing of an action undertaken pursuant to a landslide or some such emergency, if that tapping the emergency fund were involved, if and when that fund is created.

There may be other issues besides the emergency fund where quick action is required. Where it is of such magnitude that, indeed, it is appropriate that the Board decide, with its U.S. majority and U.S. votes directed by the designee of the Secretary of Defense, that the action should be taken in the clear. Certainly it is U.S. policy to take that action, reference to the Board by the Administrator in such cases would be indicated.

Mr. **Bauman**. It just seems to me as I conceived it—as only one member's interpretation, since the issue has never been addressed as closely as this morning—that the Administrator's role was to act between Board meetings, that the Board set down general guidelines and that in emergency cases, in particular, the Administrator would be able to act.

Obviously the Board itself can take certain actions when they convene subsequently, but again it seems to underscore your view or the view of whoever drafted these regulations that the Board, with an executive committee, is in fact the controlling body that will set policy and make all decisions as in a corporation.

It troubles me that the Administrator may be downgraded because I think on a day-to-day basis he has to have these powers to act, regardless of your executive committee's availability.

Mr. **Blumenfeld**. I appreciate your comment. I think perhaps the Administrator may want to say a few words on this issue. But let me remind you that in 1990, the Administrator becomes Panamanian.

Mr. **Bauman**. That doesn't give me any particular pause. I am sure by 1990 all of this will have been resolved and we will no longer be on these subcommittees or have these problems. Perhaps you won't even be there, either, Mr. Secretary.

Mr. **Blumenfeld**. Perhaps not.

Mr. **Hubbard**. Mr. Blumenfeld, what is the legal basis for provisions of section 4.1 prescribing the duties of the Administrator who is appointed and serves at the pleasure of the President?

Mr. **Blumenfeld**. The section specifically spells out the appointment of the Administrator. The section and the act itself is silent with respect to the duties of the Administrator.

We believe it is consistent with the Public Law 96-70 that the authority to define those duties be delegated as the President sees fit. I would add that in the appointment of Mr. McAuliffe as the first Administrator the President was provided with a job description for that position, a description which, if the committee does not have, I would be glad to put before it.

Mr. **Hubbard**. I am aware that Congressman Bauman likes to be on the House floor when the House convenes, especially nowadays. I have three more questions.

I am going to wait on those and let Congressman Bauman proceed with his questioning in view of the fact he may want to get over to the House floor.

Mr. **Bauman**. I appreciate that, Mr. Chairman.

There are a couple of questions that arose in my reading of the June meeting minutes. One has to do with some comments apparently from Phil McAuliffe, regarding the future income of the Canal on page 8 of your minutes. There seems to be in the Board's discussion an inherent acceptance that there will be an increase in tolls. Then there is a mention of a potential loss of $30 to $40 million that may be identified. What is that all about?

I thought our financial condition was relatively stable?

Mr. **Blumenfeld**. At the time of the June meeting, the budget requests that were in hand from the various operating bureaus and the revenue projections indicated very preliminarily that there might be such a deficit.

The refined figures developed between then and the time of our July meeting indicated, as I testified, that no toll increase will be required in fiscal year 1982.

Mr. **Bauman**. That projection had to do with income, not costs, but income from the tolls, and the possibilities of a shortfall?

Mr. **Blumenfeld**. That was a projection for 1982 that we were talking about. At the June meeting the projections for 1982 indicated there might be a shortfall; but the refined figures developed between then and the July meeting indicated there would not be in 1982, and there is not now.

We do not have a problem in fiscal year 1980 and don't anticipate one for 1981, as reflected in our budget submission. Now we conclude we don't anticipate one for fiscal year 1982 either.

Mr. **Bauman**. Mr. Chairman, I think I have touched on most of the other concerns I had. Of course, I haven't read the July board meeting minutes. I might have some other concerns to express then, but I would just express my hope again that we don't have to replay the issue of the treaties and the law on the floor of the House again.

We have the Department of Transportation appropriations bill coming up shortly, maybe even this week. We also have the authorizing legislation pending.

It really makes a mockery of the process if we don't have an authorizing bill and yet if the Board of Directors or Supervisors continues to move in the direction that it has, obviously this gives rise to complaints by many of us.

You have said, Mr. Secretary, in a very familiar phrase, "watch what we do; not what we say."

I have heard that said in the White House last week and other White Houses in past times.

It gives me pause and concern when I hear that phrase used. I will watch what you do. I have before me what you say, which is going to cause a great deal of concern to many of us. We are willing to work with you in any way we can and take into account the need to bring our Panamanian brothers into the process fully, as the treaty envisions, but there are terms in the treaty and the law that cannot be bent and should not be.

That I think, Mr. Chairman, is all I have to say.

Mr. **Blumenfeld**. I agree, Mr. Bauman. Let me say watch not only what we do prospectively, but what we have done retrospectively. No toll increases, continuous operation of the canal.

Mr. **Bauman**. If I may make one comment, I don't know why the administration delayed the appointment of the Board of Supervisors or Directors.

The Panamanian members were ready to go many, many months before. In a private conversation with some Americans and Panamanians who are close to the situation, the representation was made to me that if the Board never met it might be far better because the two administrators seem to have handled the situation very well working on a totally extra legal basis, since no one envisioned that hiatus.

The problems arose only after the Board was appointed. That may be true of all boards, having served on so many of them myself.

Mr. **Hubbard**. Thank you, Congressman Bauman. These three last questions, and then Congressman Carney may have some questions, Mr. Whitman may have some questions, and Mr. Guy Land, legislative assistant to Mr. David Bowen, who could not be here today and who has his legislative assistant present.

Mr. Blumenfeld, what is the legal basis or section 4.2 of the regulations assigning duties to the Deputy Administrator when section 1104(a) of Public Law 96-70 provides specifically that the Deputy Administrator "shall perform duties, such duties as may be prescribed by the President"?

Mr. **Blumenfeld**. It has been delegated by the President through his Executive order.

Mr. **Hubbard**. To the Secretary of Defense?

Mr. **Blumenfeld**. And through the Secretary of Defense to the Commission.

Mr. **Hubbard**. Could we please have a copy later of that delegation to the commission?

Mr. **Blumenfeld**. Yes, indeed.

Mr. **Hubbard**. Two more questions.

Is the intention of section 3.4 of the regulations to authorize the Board to provide for payment of travel expenses and per diem for committee members at rates different from those provided for Board members by section 1107 of Public Law 96-70?

Mr. **Blumenfeld**. No, it is not. I suppose it is conceivable that they might be reimbursed at less than what is authorized by U.S. law on certain occasions, but certainly not more.

Mr. **Hubbard**. Lastly, if the board does not follow the provisions of the Government in the Sunshine Act, it appears that under present procedures there are long delays in bringing to the attention of the subcommittee significant developments in the management of the commission, including actions taken at board meetings.

Do you have any suggestions for improving the procedures employed by the commission to keep our subcommittee fully advised on a current basis?

Mr. **Blumenfeld**. What I would suggest, Mr. Chairman, is that if you are questioning the timeliness with which you get the minutes that reflect what went on at the Board meetings, I would offer to brief your subcommittee orally on what has transpired at a Board meeting.

The minutes of a meeting don't become official minutes of the Commission until ratified by the Board at a subsequent meeting, so that I would not provide copies of what are draft minutes. But I would certainly be willing to brief the committee on what transpired at a Board meeting as soon after that meeting as we could set up a convenient time.

Mr. **Hubbard**. Congressman Carney?

Mr. **Carney**. I have no further questions.

I would like to just express my concern that perhaps we are not working as close together in the Congress as we could to have an efficient operation of the canal.

I would hope some of the things we brought up today, what specifically lends great concern to me is the fact of the closed meetings.

I think there is no necessity for it.

I think as the chairman stated before, in today's times, with such a great feeling for open government in America, where there is an awful lot of mistrust in government in America, that if you continue that policy, we could indeed be on a collision course.

I would hate to see that. I would hope, as you said, that we can look at the record of how you have performed. It is kind of tough to look at a record of how you performed when we can't even attend a meeting to find out how you are performing.

I would just hope that some of the things that were brought out today would not be put in the circular or the round file.

The feeling that I have is that you really don't care about the Congress. If that is the feeling that will prevail, it is going to be a rough several years down the road.

As Mr. Bauman said, perhaps we are not going to be on this committee or you are not going to be in your position. I don't know. But the Congress is a sensitive body, a responsible body. If they feel—like I believe—that they are being left out, they have to react that way. We have a responsibility to that canal. We will have a responsibility to that canal until the year 2000.

As a committee member now—whether I will be in the future, I don't know—I have that responsibility. I am a little bit skeptical, perhaps, as to whether we are going to work as well together as we should or not.

That is of great concern to me. I would hope that we do have better communications in the future. I would hope that the chairman of this committee, that we have an opportunity to have oversight or—meetings on the operation of the canal on a more frequent basis so we can keep track of our responsibility.

It is no secret that the implementation was long and drawn out. There was an awful lot of opinion. There were very close votes on many of the key issues. I think those sentiments of many of the members still prevail.

We want to watch this very, very carefully. I think you are making it somewhat difficult for us to do that, to carry out our responsibility as a Congress.

I would hope that you would look very, very carefully at that one particular issue. That is the closed meetings. I hope in your position you bring that feeling back to the Commission that indeed, I believe, the Congress is not satisfied with that type of meeting.

You are an agency of the United States. I think you should be subject to the same rules as any other agency of the United States.

Your interpretation of having two ex officio members on it to me is bunk.

I can't think of a better term.

I would hope that we can have smoother relationships or we can run the canal and take care of our remaining responsibilities for the next 19 years. I think we have to get together a little bit more often, have better dialog, have a better understanding of what is going on.

As I said, right now I know as a member of this subcommittee I am somewhat irritated. I think the cooperation of the Congress is necessary.

We would appreciate a little bit more cooperation, at least I would. I am speaking as a person.

I think many of the Members of Congress in 1980 will not tolerate closed meetings. It is almost un-American. It might sound funny. I can understand having closed meetings. There are circumstances when you have to, but to have it a condition for every meeting is ridiculous.

I would hope that that would be corrected by the time we meet again.

Thank you very much.

Mr. HUBBARD. Thank you, Congressman Carney. You have indeed my high regards and the affection I have for my colleague and friend from New York are known to him and to others perhaps in this room.

I would respectfully disagree regarding Mr. Blumenfeld's attitude about the Congress. I have found him to be a very helpful, cooperative individual in past times, dealing with our subcommittee and the full committee. I would have to respectfully——

Mr. CARNEY. If I might add, I wasn't meaning that personally to Mr. Blumenfeld. I hope that was not the way it was interpreted. I am saying as a commission, as a commission if they continue to disregard some of the intent of Congress—and it is well known what the intent was. We sat in this room day in and day out ironing out the implementation legislation. I have seen several areas where it is not. I don't mean that as a personal attack on Mr. Blumenfeld.

My God, if that is the way it came out, please make sure it is loud and clear in the minutes that is not my intention.

I can understand the problems that all the members of the board have dealing with a situation that is somewhat unique to say the least. I would hope that that is not the way it is coming out.

I do feel in my heart that we could be on a collision course with the Congress, that you will not receive the cooperation that will be necessary to run the canal if you continue to keep us in the dark.

That is all I am saying.

I don't mean that in a personal vein. I am glad you brought that out so there would be no misunderstanding, Mr. Chairman.

Mr. HUBBARD. I would say again regarding my high regard for the Congressman from New York, whose attitude about the Panama Canal treaties was originally the same as mine—I would indicate that these are delicate issues that the Commission and the Board deals with and these same type delicate issues regarding the Panama Canal treaties and its implementation did cause even the Congress or the House of Representatives to have a closed session on two occasions, if my memory is correct.

There may be reasons not known to Congressman Carney and me that caused the Board to have that desire to meet in closed meetings, and yet I believe he has said repeatedly today that they are anxious to report the happenings of these meetings.

Mr. BLUMENFELD. Yes, indeed, Mr. Chairman.

Mr. HUBBARD. Not only to our subcommittee, but to the news media, to the public, whenever requested, or even beyond that, on their own.

Does my good friend, the agitated, irritated Congressman from New York, have any other comments?

Mr. CARNEY. Mr. Chairman, I don't really want to get into a dialog with the chairman.

I would say the norm is to have open committees. When there is a situation that would require secrecy, you would vote to go into a secret session. I would have no objection to that. However, the norm here is to have secret meetings.

I think—or closed meetings, I should say. I think that is not in the American spirit right now, today, in 1980. That is my objection.

As I say, I would hope that that would not continue to be the case. The Congress wants to cooperate as much as possible with the Commission. Certainly it is our desire to see that the implementation legislation is carried out.

It is our desire to see that our responsibilities are carried out. It makes it somewhat awkward for us to do that when one of the elements of the carrying out of the legislation in the running of the canal is being done in secrecy where we as members of Congress cannot even participate without an invitation.

It makes it awkward for me to see how I can carry out my responsibility as a member of this committee or as a Member of Congress when I am being excluded from the happenings. That is not to say that I want to run down and attend every meeting, but I think it is absurd that we would need permission to attend such a meeting.

Mr. **Hubbard.** Does the Congressman agree that the President and the State Deprtment should not have revealed to each Member of Congress the plans of the Iranian rescue mission which were carried out in secrecy?

Mr. **Carney.** Once again, I don't want to get into a dialog. I agree with you, I think, 100 percent.

Does the chairman agree that the President should reveal to us all the happenings in the Billygate situation? We can go on and on and on. We are not going to get into a dialog here.

Mr. **Hubbard.** Thank you, Congressman Carney.

Mr. Guy Land, the legislative assistant to Congressman David Bowen, do you have comments or questions?

Mr. **Land.** Just one brief question, Mr. Chairman.

I thank you.

Mr. Secretary, would you describe very generally the effort of the Board in drafting the regulations to take into account the congressional intent behind Public Law 96-70, as expressed in the legislative debates?

Mr. **Blumenfeld.** Well, I am not sure exactly how to answer that, except to say that it was clearly our intent that the regulations reflect the requirements of Public Law 96-70.

As I tried to say in response to specific questions about the specific sections of the regulations, I believe we have been successful. We bore in mind the requirements of Public Law 96-70 in determining how the Board should operate.

Mr. **Land.** Thank you very much, Mr. Secretary. Thank you, Mr. Chairman.

Mr. **Hubbard.** Mr. Blumenfeld, let me say as chairman of our subcommittee, to back up some of the comments made by my colleague, Mr. Carney of New York, that indeed this subcommittee is anxious to know the happenings and the decisions of this Board. I want my views known on that in case it was interpreted that I—though I have not criticized your regulations that Board meetings shall not be open to the public, I am anxious that we know what does happen.

We are anxious to monitor the Panama Canal treaties, the implementation thereof, and our subcommittee will continue to have oversight hearings as to the implementation of the Panama Canal treaties.

You probably remember that the chairman and Congressman Bauman and Congressman Carney were not in favor of the Panama Canal treaties as Members of Congress, but that decision was not ours; that was the President's and the Senators'.

We do have the Panama Canal Subcommittee, and its main goal at this time is to implement the treaties and see that the rights of the United States are protected. I realize full well that that is the same goal, of course, of Mr. Michael Blumenfeld and Mr. Dennis P. Phil McAuliffe, and also Col. Michael Rhode.

Do you, Phil McAuliffe, or you, Mike Rhode, have any comments to add to that which has already been said?

Mr. **McAuliffe**. If I may, Mr. Chairman, I would like to offer a very brief 2 or 3 minutes, perhaps, summary of our situation in Panama, but with respect to relationships with the Board or clarification of the role of the Board, I believe that has been adequately covered in the questions and answers this morning, sir.

Mr. **Hubbard**. Colonel Rhode?

Mr. **Rhode**. I have nothing to say, Mr. Chairman. Thank you.

Mr. **Hubbard**. Mr. Blumenfeld, anything else from you?

Mr. **Blumenfeld**. No, sir.

Let me simply say I welcome such opportunities as this, when the committee does hold oversight hearings, to share information and perspectives. It is vital. We do need the cooperation of this committee. There is no doubt about that.

If it were my intent to ignore the will of this committee, it is not an intent that I could execute. Moreover, I do not intend to ignore it. I welcome the questions and the comments that are made, and I hope that we will continue to have good communications in the future.

We obviously are subject to Public Law 96-70. As I tried to testify, we are operating in accordance with the requirements of Public Law 96-70. The will of this committee is not something that can be ignored as we operate, and I don't plan to ignore it.

Mr. **Hubbard**. Please understand Congressman Carney and this chairman's attitude. We are anxious to work with you. We are anxious to find out what the Board is doing. We are anxious that the interests of the U.S. Government be protected, and though Congressman Carney and I do like to be informed and to know what is going on to be sure the Congress is kept in mind, and that the decisions of the Board be known to us. I know I speak for Congressman Carney in saying that we hope that in the future the President, the State Department do make decisions such as the Iranian rescue mission without notifying each Member of Congress, some of whom cannot keep a secret.

Anything else?

Mr. Merrill Whitman I realize was mentioned a few moments ago. He has already asked the questions he had in mind.

[Mr. Whitman's analysis follows:]

COMPARATIVE ANALYSIS
REGULATIONS OF THE BOARD
OF THE PANAMA CANAL COMMISSION
ADOPTED JUNE 4, 1980

PREPARED BY W. MERRILL WHITMAN

JULY 21, 1980

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PART I

BACKGROUND AND SUMMARY

The purpose of this memorandum is to examine the statutory authority for the regulations adopted by the Board of the Panama Canal Commission at a meeting of the Board on June 4, 1980.

Paragraph 1 of Article III of the 1977 treaty grants to the United States the rights to manage, operate and maintain the Panama Canal." Paragraph 3 of the Article provides that the United States will "in accordance with the terms of this Treaty and the provisions of United States law carry out its responsibilities by means of a United States Government agency called the Panama Canal Commission, which shall be constituted by and in conformity with the laws of the United States of America."

Paragraph 3 of Article III goes on to provide that the Commission "shall be supervised" by a nine member Board of whom five shall be nationals of the United States and four of whom shall be Panamanian nationals "proposed by the Republic of Panama for appointment to such positions by the United States of America."

Title 1 of Public Law 96-70 established the Panama Canal Commission as an agency in the Executive Branch of the United States Government. Under the Constitution the President is the head of the entire Executive Branch and Section 1101 of Public Law 96-70 provides that the authority of the President with respect to the Commission shall be exercised through the Secretary of Defense. Consistently with that provision the President has delegated substantially all of his supervisory authority over the Commission as a Government Agency in the Executive Branch to the Secretary of Defense. This was accomplished by Executive Order No. 12215 issued May 27, 1980.

Prior to the effective date of Public Law 96-70 the Panama Canal was operated by a government agency in corporate form called the Panama Canal Company. The law governing the operations of that agency specifically provided that "management of the corporation was vested in a Board of Directors and the law granted broad and extensive powers to the Company. All these former provisions were repealed by Public Law 96-70 and an entirely different form of government agency was substituted under the direct control of the President through the Secretary of Defense.

At the time the bill which was eventually enacted as Public Law 96-70 was under consideration by the Congress, both the Government of Panama and the corporate agency then operating the canal objected strenuously to the provisions of the law that gave direct control to the President and

Secretary of Defense, substituting a supervisory board for a Board of Directors with full management powers. This controversy is reflected in the legislative history of Public Law 96-70 and in letters from President Royo to President Carter. See the annotations and materials in Parts III and IV.

The Members of the supervisory Board called for by the Act were appointed by the President after the nominations of the members who were U.S. nationals were confirmed by the Senate.

The supervisory Board held its first meeting early in June of this year and a press release issued after the meeting announced that the "Board of Directors" of the Panama Canal Commission "assumed responsibility for policy-making and supervision of the affairs of the Panama Canal Commission." The press release further stated that actions taken by the Board included "approval of the regulations which govern the functions of the Board as specified in the Panama Canal Treaty of 1977."

Close examination of the Regulations adopted by the Board on June 4 suggest a number of fundamental problems in respect to the conformity of the regulations to the provisions of Public Law 96-70 and other provisions of statutory law in respect to the organization of the Panama Canal Commission, and the authority and functions of the Board.

Specific problems suggested by the adoption by the Board of the June 4 regulations include the following:

1. The adoption of the name "Board of Directors," a term not used in the English text of the treaty or in the law; (Sec. 1.1).

2. The exclusive reference to the 1977 treaty as the source of the authority of the Board and the various provisions of the regulations without any reference to the applicable governing provisions of Public Law 96-70; (Sec. 1.1, 4.1, and 4.2).

3. The assumption of authority to appoint officers and agents and to prescribe their duties - a power the Act vests in the Commission; (Sec. 1.2(b)).

4. The substitution of an "appointment affidavit" for the oath of office required by law; (Sec. 1.4).

5. The provision that Board meetings shall not be open to the public in the face of the contrary provisions of the Government in the Sunshine Act which requires open meetings; (Sec. 1.5(b)).

6. The provision that Board members shall vote "in accordance with the instructions of their respective Governments" thereby recognizing a dilution of the complete authority of the United States Government over one of its agencies; (Sec. 1.8).

7. The delegation of the powers of the Board to an Executive Committee which is authorized to act without the presence of a majority of the members of the Board of whom a majority are nationals of the United States, as required by the law; (Sec. 3.1).

8. The assignment of specific powers to the Administrator, an officer of the United States appointed by and serving at the pleasure of the President, and necessarily performing duties assigned by the President; (Sec. 4.1.).

9. The assignment of duties to the Deputy Administrator, a power specifically reserved to the President by the law; (Sec. 4.2).

10. The provision for payment of travel expenses of members of Committees "in accordance with regulations pertaining to the establishment of the Committee - a matter expressly regulated by the provisions of the law governing payment of travel expenses to Board members. (Sec. 3.4).

11. The adequacy of the procedures established to keep the Congress currently and fully informed concerning the activities of the Panama Canal Commission and its component elements, including the Board.

PART II

JUN 4 1980

REGULATIONS OF THE BOARD OF DIRECTORS
PANAMA CANAL COMMISSION

ARTICLE I

The Board of Directors

Sec. 1.1. Functions. Responsibility for policy making and supervision of the affairs of the Panama Canal Commission is vested in a Board by Article III 3(a), Panama Canal Treaty of 1977. The Board shall be called the Board of Directors, Panama Canal Commission. The Board shall review and approve for submission to the Congress the annual budget of the Commission to include the capital program for Canal improvements.

Sec. 1.2. Composition of the Board. (a) The Board of Directors is composed of nine members, five of whom are nationals of the United States, and four of whom are nationals of the Republic of Panama.

(b) There shall be a Chairman of the Board of Directors, elected by members, who shall preside at all meetings.

Sec. 1.3. Appointment and Term. (a) The members of the Board of Directors are appointed by the President of the United States for an indefinite term in accordance with Article III of the Panama Canal Treaty of 1977.

(b) The Board of Directors may elect or appoint such other officers and agents as it shall deem necessary or as business of the Commission may require, in carrying out the provisions of the Panama Canal Treaty of 1977, each of whom shall hold office for such period, have such authority and perform such duties as the Board of Directors may prescribe from time to time.

Sec. 1.4 Appointment Affidavit. Prior to assuming his position, each member of the Board of Directors shall complete an appointment affidavit administered by a Commission official signifying his commitment to faithfully discharge the duties of his position. His affidavit signifies the formal assumption of the office and shall be filed as official records of the Board of Directors.

Sec. 1.5 Regular Meetings. (a) Regular meetings of the Board of Directors shall be held at least quarterly at a place and on such dates as may be agreed by the Board of Directors or as designated by the Chairman of the Board. Members shall be notified of meeting by telephone, with written notice dispatched immediately thereafter, a minimum of 15 calendar days prior to a scheduled meeting. At least two regular meetings per year shall be held in Panama.

(b) Board meetings shall not be open to the public. Officials and staff of the Commission, and others, may attend such portions of meetings as they are invited to by the Chairman, except that, the Administrator and Deputy Administrator shall be invited to attend all Board meetings. In addition, Panamanian and U.S. Board members, as groups, may bring expert advisors to Board meetings. Such advisors may only address the Board with the consent of the Board.

Sec. 1.6. Availability of Records. The Board of Directors shall have access at all times to financial and operational records maintained by the Commission.

Sec. 1.7. Quorum. A quorum for the transaction of business shall consist of a minimum of five Board members of which a majority of those present are nationals of the United States. It is the intention of the Board that a maximum number of United States and Republic of Panama Board members be present at each Board meeting.

Sec. 1.8. Voting. Action shall be by a majority vote of the members present. Members shall vote in accordance with the instructions of their respective governments.

Sec. 1.9. Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board at the request of any member. Members shall be notified of the meeting by telephone, with written notice dispatched immediately thereafter, a minimum of 5 calendar days prior to a scheduled meeting, of the time, place and purpose of meeting.

Sec. 1.10. Per Diem Allowance and Travel. While away from home or regular place of business, each member of the Board of Directors shall be paid per diem and travel expenses in connection with attendance at meetings, time spent on special service of the Commission, or while traveling on Commission business.

ARTICLE II

Offices

Sec. 2.1. Offices. The principal office of the Panama Canal Commission shall be located in the Republic of Panama in one of the areas made available for the use of the United States pursuant to the Panama Canal Treaty of 1977 and related agreements. Branch offices will be maintained at Washington, D.C., and such other places as the Board of Directors may direct.

ARTICLE III

Committees

Sec. 3.1. Executive Committee. (a) The Board shall elect annually from among its members an Executive Committee consisting of four members in addition to the Chairman of the Board. Two of the members shall be Panamanian nationals and two shall be U.S. nationals. Notice shall be sent to all members in writing or by other means of communication when an issue is to be considered by the Committee. Three or more members shall constitute a quorum when they include the Chairman and one U.S. national.

(b) During the intervals between meetings of the Board of Directors, the Executive Committee may exercise all the powers of the Board of Directors in acting on matters upon recommendation of the Administrator that disposition of the matter cannot, because of its urgency, await the next Board meeting.

(c) Meetings of the Committee may be called by the Chairman upon his own initiative or at the request of any member. Such meetings may be conducted and issues before the Executive Committee decided, by telephone or other such means in lieu of physical attendance by Executive Committee members, if the Chairman determines that the issue before the Committee is of such an emergency nature that time is of the essence.

(d) The Board may affirm, alter or revoke any action of the Committee.

Sec. 3.2. Standing and Special Committees. (a) For the proper performance of its functions, the Board of Directors may establish such other committees as necessary. Any such committee shall be composed of four members of the Board of Directors, of whom two shall be nationals of the United States, and two shall be Panamanian nationals.

(b) The function of such Committees shall be to provide support to the Board of Directors and recommend to the Board of Directors necessary or appropriate action.

(c) The Board of Directors shall establish rules on all matters relative to the Committees referred to in this article.

(d) The Board of Directors may reach a decision without waiting for the competent Committee's report or proposal.

(e) Committees may conduct their business by means other than a meeting if all members of the committee consent.

(f) A committee quorum shall consist of a majority of the members and action shall be by a majority of the members present.

Sec. 3.3. Committee Procedure. Each committee shall keep minutes of its proceedings and report the same to the Board at its next meeting. Any member of the Board shall have access to the information and records of any committee at any time. The Board may affirm, alter or revoke any action of any committee.

Sec. 3.4. Per Diem and Travel Expenses of Committees. While away from home or regular place of business, each member of a committee shall be paid per diem and travel expenses in connection with attendance at meetings of a committee or while traveling on committee business in accordance with regulations pertaining to the establishment of the Committee.

ARTICLE IV

Administration

Sec. 4.1. Administrator. (a) The Administrator, appointed by the President in accordance with the provisions of Article III 3(c) of the Panama Canal Treaty of 1977 shall, under the supervision and direction of the Board of Directors, be the chief executive officer of the Commission, and have general and active control of its affairs and business and general supervision over its officials, agents, attorneys, and employees.

(b) The Administrator shall have the power, subject to the regulations promulgated by the Board of Directors and to the laws that the Panama Canal Treaty of 1977 and related agreements permit to be applied, to appoint, remove, fix the compensation and prescribe the conditions of employment of officials and employees of the Panama Canal Commission, other than those appointed by the Board of Directors; provided, however, that matters of general policy involved shall be subject to the authority of the Board of Directors.

Sec. 4.2. Deputy Administrator. The Deputy Administrator, appointed by the President in accordance with the provisions of Article III 3(c) of the Panama Canal Treaty of 1977, shall be the principal assistant to the Administrator. During the Administrator's temporary absence from duty with the Commission, or during his disability, or upon his express delegation, the Deputy Administrator shall perform all the duties of the Administrator, and, when so acting, shall have all the powers of, and be subject to all restrictions upon, the Administrator. The Deputy Administrator shall have such other power and shall perform such duties as may be assigned to him by the Board of Directors or the Administrator.

Sec. 4.3. Secretary. (a) There shall be a Secretary appointed by the Board of Directors who shall assist the Board in the conduct of its affairs. The Secretary shall, on behalf of the Chairman, issue the notices of meetings to members of the Board, and shall attend all meetings of the Board and its committees and record all proceedings thereat in a book to be kept for that purpose. He shall perform such other duties as may be assigned to him by the Chairman of the Board or the Administrator.

(b) The Secretary shall direct the Branch Office in Washington, D.C., established pursuant to Section 2.1.

ARTICLE V

General Provisions

Sec. 5.1. Language. Board members may speak at Board meetings in either English or Spanish.

Sec. 5.2. Amendment. These regulations may be amended at any meeting of the Board of Directors upon written notice to each Board member containing a statement of the proposed amendment at least five days prior to such meeting.

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JUN 4 1980

REGULATIONS OF THE BOARD OF DIRECTORS
PANAMA CANAL COMMISSION

ARTICLE I

The Board of Directors

Sec. 1.1. Functions. Responsibility for policy making and supervision of the affairs of the Panama Canal Commission is vested in a Board by Article III 3(a), Panama Canal Treaty of 1977. The Board shall be called the Board of Directors, Panama Canal Commission. The Board shall review and approve for submission to the Congress the annual budget of the Commission; to include the capital program for Canal improvements.

PANAMA CANAL TREATY

ARTICLE III

CANAL OPERATION AND MANAGEMENT

1. The Republic of Panama, as territorial sovereign, grants to the United States of America the rights to manage, operate, and maintain the Panama Canal, its complementary works, installations and equipment and to provide for the orderly transit of vessels through the Panama Canal. The United States of America accepts the grant of such rights and undertakes to exercise them in accordance with this Treaty and related agreements.

* * *

3. Pursuant to the foregoing grant of rights, the United States of America shall, in accordance with the terms of this Treaty and the provisions of United States law, carry out its responsibilities by means of a United States Government agency called the Panama Canal Commission, which shall be constituted by and in conformity with the laws of the United States of America.

(a) The Panama Canal Commission shall be supervised by a Board composed of nine members, five of whom shall be nationals of the United States of America, and four of whom shall be Panamanian nationals proposed by the Republic of Panama for appointment to such positions by the United States of America in a timely manner.

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93 STAT. 456 PUBLIC LAW 96-70—SEPT. 27, 19

TITLE I—ADMINISTRATION AND REGULATIONS

CHAPTER 1—PANAMA CANAL COMMISSION

ESTABLISHMENT OF COMMISSION

SEC. 1101. There is established in the executive branch of the United States Government an agency to be known as the Panama Canal Commission (hereinafter in this Act referred to as the "Commission"). The Commission shall, under the general supervision of the Board established by section 1102 of this Act, be responsible for the maintenance and operation of the Panama Canal and the facilities and appurtenances related thereto. The authority of the President with respect to the Commission shall be exercised through the Secretary of Defense.

SUPERVISORY BOARD

SEC. 1102. (a) The Commission shall be supervised by a Board composed of nine members, one of whom shall be the Secretary of Defense or an officer of the Department of Defense designated by the Secretary. Not less than five members of the Board shall be nationals of the United States and the remaining members shall be nationals of the Republic of Panama. At least one of the members of the Board who are nationals of the United States shall be experienced and knowledgeable in the management or operation of an American-flag steamship line which has or had ships regularly transiting the Panama Canal, at least one other such member shall be experienced and knowledgeable in United States port operations or in the business of exporting or importing one of the regular commodities dependent on the Panama Canal as a transportation route, and at least one other such member shall be experienced and knowledgeable in labor matters in the United States. Three members of the Board shall hold no other office in or be employed by the Government of the United States.

HOUSE COMMITTEE REPORT
NO. 96-98, PART II

II. EFFECT OF H.R. 111

H.R. 111 would repeal Title 2 of the Canal Zone Code and return to the noncorporate structure under which the canal was operated prior to 1951. In format, the bill follows the organization of Title 2 of the Canal Zone Code in its present form, preserving existing section numbers as far as possible.

The principal features of H.R. 111 are:

1. The provision for operation of the canal by a noncorporate agency instead of continuing the Panama Canal Company under another name;
2. The return to the requirement that revenues of the canal be paid into the Treasury and that expenditures be made pursuant to annual appropriations;
3. The centralization of administrative authority and responsibility in the Secretary of Defense; and
4. Provision for Presidential appointment and Senate confirmation of the key officials of the agency and members of the various policymaking bodies provided for by the treaty, such as the U.S. nationals on the supervisory board, and the Administrator of the Panama Canal Commission.

TITLE I.—ADMINISTRATION AND REGULATION

PART I.—ADMINISTRATION

Chapter 1.—Panama Canal Commission

This chapter restores the concept under which the canal operated until 1951, that the agency operating the canal is subject to the same fiscal and administrative controls as are applicable to Government agencies generally. The most conspicuous effect of this arrangement is that all revenues derived from the operation of the canal are to be paid into the Treasury and expenditures are to be made pursuant to Congressional authorizations and appropriations.

Section 101.—Panama Canal Commission.—The treaty (Article III, paragraph 3) provides that the United States will carry out its responsibilities for operation of the Canal by means of a United States Government agency called the "Panama Canal Commission" constituted by and in conformity with the laws of the United States (Article III, paragraph 3), and that upon entry into force of the treaty, the Government agencies known as the Panama Canal Company and Canal Zone Government will cease to operate (Article III, paragraph 10).

Section 101 of the bill replaces the Panama Canal Company by a new agency called the Panama Canal Commission. The new agency will be subject to the laws of the United States applicable generally to other Government departments and agencies other than those established as Government corporations under the Government Corporation Control Act. Apart from that general provision of section 101 that the agency is established for the maintenance and operation of the Canal and the facilities and appurtenances related thereto, the authority and responsibilities of the agency are spelled out by the further provisions of the bill and by the general laws of the United States referred to above.

Under the provisions of the present law that the interests of the United States as owner of the corporate agency operating the canal shall be represented by the President of the United States or such officer as he may designate, called the "stockholder" (2 Canal Zone Code 62), the President has in the past designated the Secretary of the Army as stockholder (35 C R 3.2) but as a practical matter the Secretary of the Army has exercised that delegated authority subject to the direction of the Secretary of Defense. Section 101 continues this arrangement by placing the responsibility for Executive oversight of canal operations in the Secretary of Defense who may, if he so desires, delegate the responsibility in whole or in part to the Secretary of the Army.

Although it is not contemplated that the provisions of this section will make the Panama Canal Commission a part of the Department of Defense, it is considered that consolidation of oversight responsibility in the Secretary of Defense is particularly appropriate in view of the relationship of that responsibility to the related duties of the Secretary of Defense in respect to the protection and defense of the Canal under the provisions of the 1977 treaties.

Section 102. Supervisory Board.—Paragraph 3(a) of Article III of the treaty provides that the Panama Canal Commission "shall be supervised by a Board" consisting of nine members, five of whom shall be nationals of the United States and four of whom shall be nationals of Panama.

Section 102 of the bill establishes such a board. Consistent with the provisions of section 101 establishing the Commission as such, section 102 provides that the Board shall supervise the Commission under the direction of the Secretary of Defense.

The section further provides that of the five members of the Board who are U.S. nationals, at least one member shall have experience in U.S. maritime matters, one in port operations or in the business of importing or exporting commodities that move through the canal and one in labor matters. These three members are prohibited from holding any other office in or to be employed by the U.S. Government. The members of the Board who are U.S. nationals are required to cast their votes as directed by the Secretary of Defense, but no requirement exists for the Panamanian nationals who are members of the Board to cast their votes in accordance with the wishes of the Secretary of Defense or his designee.

Experience with the operations of the Panama Canal Company with Boards of Directors selected predominantly from the private sector and other Boards composed predominantly of Government officials suggests that orientation of the members of the Board to private business and professional experience is preferable to a parochial approach resulting from identification with the particular interests of one or another department of the Government. Coordination of matters of Government policy with other departments and agencies is required in the management of all Government agencies, and the means for effecting that coordination will be available to the Panama Canal Commission through established channels including the oversight functions of the Secretary of Defense.

Paragraph (b) of section 102 provides for appointment of the supervisory board by the President with Senate confirmation of the members who are nationals of the United States. Provision that the members serve at the pleasure of the President, without fixed terms, reinforces other provisions of the bill intended to insure that the operation of the Canal will be fully responsive to U.S. Government policy.

SENATE COMMITTEE REPORT
No. 96-255

Commission powers and organization

The Panama Canal Treaty provides that the canal shall be operated by a U.S. agency called the Panama Canal Commission. The Commission shall be governed by a nine-member Board of Directors, of which five shall be American and four Panamanian for the life of the treaty. Day-to-day administration will be provided by an American Administrator and a Panamanian Deputy Administrator until 1990, after which the nationalities will be reversed.

The Administration bill provides that the members of the Board will be appointed by the President, without specification as to their qualifications, but Administration spokesmen have indicated that the President intends to appoint to the Board representatives of the Departments of Treasury, Defense, State, Commerce and Transportation. H.R. 111, on the other hand, specifies that one of the members be the Secretary of Defense or his designee, one a person experienced in shipping, one a person experienced in port or importing operations, and one a person experienced in labor matters. The committee concludes that the President should have flexibility in the naming of members of the Board, and generally adopted the relevant provisions of S. 1024 on this point. It was concerned that members drawn from particular interest groups might tend to be more concerned with representing their interest group and not with the overall best interests of the enterprise. While giving the President flexibility in the matter of appointing members, however, the committee is concerned that a Board composed entirely of government officials might well be unable to devote full attention to the business of the Commission, and could even bring a departmental parochialism similar to that which the committee was concerned with avoiding in the House bill. The President should take steps to ensure that the Board members he appoints are prepared be active, contributing members.

The committee adopted the action of the House in providing th the U.S. members of the Board and the Administrator should be ap pointed with advice and consent of the Senate.

The House bill contained several provisions concerning the cont over the Commission by the Secretary of Defense in both peac time and wartime, and giving the President the right to place opera tion of the canal directly under a military officer in time of wa In its action on the bill, the House Foreign Affairs Committee con cluded that these provisions were inconsistent with the treaties. Se tion 101 of H.R. 111, for example, provides that the Commission sha operate the Canal "subject to the direction of the Secretary of De fense." And section 102 states that the Board "shall act under the di rection of the Secretary of Defense." Realizing that the Commissio will be supervised generally by the Secretary of Defense, as the Com pany is now by the Secretary of the Army, the committee is concern that specific language regarding "direction" of the Commission an its Board are inconsistent with the treaty provisions that state th Commission shall operate the Canal. For example, Article III, para. provides that the United States "shall . . . carry out its responsibili ties by means of a United States Government agency called the Panam Canal Commission," and that the Commission "shall be supervise by a bi-national Board with Panamanian representation. Thus th committee declined to adopt these provisions, particularly since the are unnecessary to ensure full United States control over the wate way until the year 2000. The United States maintains its five-to-fou majority on the Board during this period and these members serve the pleasure of the President.

96th Congress } HOUSE OF REPRESENTATIVES { Report
1st Session } { No. 96-473

PANAMA CANAL ACT OF 1979

September 21, 1979.—Ordered to be printed

Mr. Murphy of New York, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 111]

DISPOSITION OF CONFERENCE ISSUES

There follows a description of the action taken by the conferees on the principal differences between the House bill and the Senate amendment.

Form of the Panama Canal Commission—(Section 1101)

The House bill provided that the Panama Canal Commission would be operated as an appropriated funds agency, with all revenues deposited in the Treasury and all expenditures made pursuant to appropriation acts approved by Congress. The Senate amendment provided that the Commission would continue to operate as a government corporation.

The Senate reluctantly recedes.

Direction of the Secretary of Defense—(Sections 1101 and 1102)

Sections 101 and 102 of the House bill provided that the Commission and its Board would act under the direction of the Secretary of Defense. The Senate amendment contained no comparable language.

The conferees adopted compromise language making it clear that the powers of the President would be exercised through the Secretary of Defense in order to clarify the administrative placement of the Panama Canal Commission as an agency within the executive branch. This language does not effect a delegation of the President's powers to the Secretary of Defense, nor does it preclude the President from exercising his powers directly.

Board Membership—(Section 1102)

The House provision (Sec. 102) provided supervision of the Commission by a Board under the direction of the Secretary of Defense, appointed by the President and, in the case of the American members, subject to Senate confirmation. Five of the new members were to be nationals of the United States and four nationals of Panama. The House provision also required that of the five U.S. members one should be the Secretary of Defense, one should be experienced in operation of ships using the Canal, one should be experienced in U.S. port operations, and one should be experienced in U.S. labor matters. The Senate amendment (Sec. 205) eliminated the requirements in reference to the three members other than the Secretary of Defense, and the specific provision for direction by the Secretary of Defense.

The conferees adopted a provision containing the requirement from the House bill that three U.S. members of the Board have specialized backgrounds in steamship and port operations, and in labor matters, and requiring that three U.S. members (though not necessarily the same three referred to above) be from the private sector. The reference to direction of the Board by the Secretary of Defense was omitted as unnecessary in view of the revised provision of section 1101 for exercise of the President's authority in reference to the Commission as an Executive Branch agency.

TREATY_ COMPARISON OF SPANISH AND ENGLISH *

Prepared by Sylvia Costellanos
Reprinted in
PANAMA CANAL TREATIES
United States Senate Debate
Prepared by Subcommittee on
Separation of Powers of the
Committee on the Judiciary
United States Senate
Page 861

III. Panama Canal Commission and Board

Article III of the Panama Canal Treaty establishes a Panama Canal Commission through which the United States will carry out its Canal management functions. In connection with this Commission, a Board is also established.[16]

The Commission is described as a "United States Government agency which shall be constituted by and in conformity with[17] the laws of the United States of America."[18] In connection with its duties, the U.S. may, among other things, "issue and enforce regulations for the effective exercise of /its/ rights and responsibilities."

These points are significant in light of the role of the Board cited earlier. The English text describes the role of the Board and its relation to the Commission in this manner: "The Panama Canal Commission shall be supervised by a Board." This seems to imply the panel is one with oversight responsibility; that it shall serve as a watchdog ensuring the Commission is properly carrying out its established responsibilities.

The Spanish version does not present a literal translation of the sentence, stating, "The Panama Canal Commission shall be directed by a Board of Directors..." Under the Panamanian text a rather different panel seems to be created. "To direct" is not synonymous with "to supervise," the former implying the existence of policy-making authority. The combination of "to direct" and "Board of Directors" (in contrast to a simple "Board") seems to indicate that Panama expects the body being created to have far more authority than the U.S. presumably intends it to have.

The policy making power of the Board implied in the Panamanian text raises at least two problems. One is the degree to which a foreign country would have control over an agency of the U.S. government.

The make-up of the Board is significant in this context. The treaty stipulates it shall consist of five Americans and four Panamanians.[19] With Panamanian participation coming one vote short of control of the Board, this panel would almost certainly emerge as a vehicle for strong Panamanian influence on matters relating to the Canal's operation.

The 5 - 4 make-up, moreover, is no guarantee the U.S. will always have a majority. With full attendance, one American voting with the Panamanian bloc would be sufficient for the latter's position to prevail. Unavoidable absences from meetings and temporary vacancies in the American positions could similarly give Panama a temporary majority on the Board. The composition of the Board, in short, dilutes—and in some instances may vitiate—the rights granted to the United States in connection with the Canal.

The second problem relates to the question of responsibility. What entity is liable for possible improper Canal operation, or accidents? The U.S. is charged with managing the Canal, and the Panama Canal Commission is officially a U.S. government agency. On this basis, responsibility should fall on the United States. Yet if the Board is to have a policy-making role, the U.S. has less than full control over the actions of the Commission. Would the U.S. nevertheless be made liable for problems relating to the Canal?

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[16] U.S. Department of State, Treaties, p. 2.

[17] In the Spanish text the words "by and" are omitted. The resulting sentence makes no reference to the Commission being constituted by the United States.

[18] U.S. Department of State, Treaties, p. 2.

[19] U.S. Department of State, Treaties, p. 3.

PRIOR LAW
CANAL ZONE CODE TITLE 2
(Repealed by P.L. 96-70)

§ 63. Board of Directors; allowances; quorum; meetings

(a) A board of directors shall manage the affairs of the Panama Canal Company. The board shall consist of not less than nine nor more than thirteen members, including:

(1) the Governor, who shall serve as a director, ex officio; and

(2) the stockholder, if he elects to serve as a director.

The stockholder shall appoint all other members of the board, and neither this chapter nor any other law prevents the appointment and service, as a director, of an officer or employee of the United States. Each director so appointed shall hold office at the pleasure of the stockholder, and, before entering upon his duties, shall take an oath faithfully to discharge the duties of his office.

* * * * * * *

§ 65. General powers of Company

(a) The Panama Canal Company may:

(1) adopt, alter, and use a corporate seal, which shall be judicially noticed;

(2) adopt, amend, and repeal bylaws governing the conduct of its general business and the performance of the powers and duties granted to or imposed upon it by law;

(3) sue and be sued in its corporate name, but an attachment, garnishment, or similar process may not be issued against salaries or other moneys owed by the Company to its employees;

(4) enter into contracts, leases, agreements, or other transactions;

(5) determine the character of, and necessity for, its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, and incur, allow, and pay them, subject to pertinent provisions of law generally applicable to Government corporations; and

(6) purchase, lease, or otherwise acquire, and hold, own, maintain, work, develop, sell, lease, exchange, convey, mortgage, or otherwise dispose of, and deal in, lands, leaseholds, and any interest, estate, or rights in real, personal, or mixed property, and any franchises, concessions, rights, licenses, or privileges necessary or appropriate for any of the purposes expressed in this chapter.

(b) The Panama Canal Company has the priority of the United States in the payment of debts out of bankrupt estates.

§ 66. Specific powers of Company

(a) Subject to the Government Corporation Control Act (31 U.S.C., sec. 841 et seq.), the Panama Canal Company may:

(1) maintain and operate the Panama Canal;

(2) construct, maintain, and operate a railroad across the Isthmus of Panama;

(3) construct or acquire, and operate, vessels for the transportation of passengers or freight, and for other purposes;

(4) construct or acquire, establish, maintain, and operate docks, wharves, piers, harbor terminal facilities, shops, yards, marine railways, salvage and towing facilities, fuel-handling facilities, motor-transportation facilities, power systems, water systems, a telephone system, construction facilities, living quarters and other buildings, guest houses, warehouses, storehouses, a printing plant, commissaries, and manufacturing, processing or service facilities in connection therewith, laundries, dairy facilities, restaurants, amusement and recreational facilities, and other business enterprises, facilities, and appurtenances necessary and appropriate for the accomplishment of the purposes of this chapter;

(5) make or furnish sales, services, equipment, supplies, and materials, as contemplated by this chapter, to:

(A) vessels;

(B) agencies of the Government of the United States;

(C) employees of the Government of the United States; and

(D) any other governments, agencies, persons, corporations, or associations eligible to make or receive such purchases, services, supplies, or materials under the laws prevailing at the time and the policies heretofore or hereafter adopted consistently with those laws;

(6) use the United States mails in the same manner and under the same conditions as the executive departments of the Federal Government; and

(7) take such actions as are necessary or appropriate to carry out the powers specifically conferred upon it.

(b) Subject to subsection (c) of this section, the Company may not undertake any new types of activities not included in the annual budget program prescribed by section 102 of the Government Corporation Control Act (31 U.S.C., sec. 847), except those which may be transferred to it pursuant to section 62(c)(2) of this title.

(c) If, during a period when the Congress is not in session, the board of directors, or the president of the Company, with the concurrence of as many of the directors as may be consulted without loss of time unreasonable in the circumstances, declares an emergency to exist, the Company may undertake recommended appropriate action within the scope of this chapter, without regard to the restriction imposed by subsection (b) of this section. A report on the emergency activity shall be presented promptly to the Congress, when it reconvenes, for its approval and such action as it may deem necessary or desirable with respect to reimbursement through supplemental appropriation of funds to cover costs or losses arising from the emergency.

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Excerpt from January 9, 1980, letter from President Royo of Panama to President Carter

94982
LN/BP
Spanish

OFFICE OF THE PRESIDENT

REPUBLIC OF PANAMA

January 9, 1980

Mr. President,

In my letter of July 11, 1979, I informed you of the objections of the Panamanian Government to several articles of Bill H.R. 111, then under discussion in the U.S. Congress, that were contrary to the spirit and letter of the Panama Canal Treaty, or that were unsuitable because they could create difficulties in implementation of the Treaty. Although amendments were made later to the text which, once it was approved, was registered as Public Law 96-70 of September 27, 1979, most of the provisions to which I objected in my letter were not amended, or at least not in a way and manner suitable for faithful implementation of the obligations contracted by the Treaty signatories.

Three months have passed since the Treaty entered into force. During this time I have followed the work of administering the Canal, principally with the help of data received from our officials of the Canal authority. In studying and analyzing these data I have noticed that the facts confirm my Government's presumptions concerning the unfavorable consequences for my country's rights and legitimate expectations and the difficulties for administration of the Canal

His Excellency
Jimmy Carter,
President of the
United States of America,
The White House.

previous letter of July 11, 1979, is valid in this respect. However, I must deal with some aspects that cannot be ignored.

In creating the Canal Commission, Section 1101 of the Act ends with the following provision: "The authority of the President with respect to the Commission shall be exercised through the Secretary of Defense." This provision, whose intent appears to be a mere formality, has in reality a special purpose, that of making the Commission totally dependent on the Department of Defense as a type of appendage to it. This dual purpose is evident in Section 1102(a), which stipulates that one of the members of the Supervisory Board shall be the Secretary of Defense and that the United States members of the Board shall cast their votes as directed by that Secretary, as well as in Section 1102(c) which stipulates that "The Board shall hold meetings as provided in regulations adopted by the Commission and approved by the Secretary of Defense." And in the name, or title, for Section 1102, the Law departs from the terminology used in the Spanish text of the Treaty, which is also authentic, and expressly calls the Board a "Supervisory Board," the final conclusion of the conversion into a supervisory board of what can be nothing less than a board of directors. Thus the Secretary of Defense is everything. He is the channel for the President to exercise authority over the Commission, a regular member of the Board, the source of instructions on how the majority of the Board should vote, and the authority who approves the Commission's regulations for the Board. For these reasons, the Law places the Canal Commission in the subordinate position of an agency of the Department of Defense. To a certain degree, the Law places it exactly where the Panama Canal Company was until October 1, 1979, i.e. under the control of the same Department, by mandate of the Canal Zone Code.

If the Treaty conceived of the Commission as a newly created legal agency that would exercise the rights and responsibilities of the United States, then the that would inevitably result from certain provisions of Bill H.R. 111, now Law 96-70.

Therefore, I am sending you this letter--the basic purpose of which is to explain the viewpoint of my Government and of the Panamanian people regarding the abovementioned situations--as an effort on our part toward good relations and mutual understanding between our countries in all matters related to the Panama Canal.

The first relevant, and most general, observation is that Law 96-70 is not, because of its contents, the appropriate legal instrument for implementation of the basic principles and objectives of the Treaty of 1977. The treaty provided that the rights and responsibilities of the United States established in its text were to be exercised through a specialized government agency, the Panama Canal Commission, in whose structure and operation the basic principle of increasing participation by the Republic of Panama in the management, protection, and defense of the Canal, as established in Article 1(3) of the Treaty, would be fully respected. Law 96-70 is a radical departure from the Treaty concept of the Canal Commission and organizes it as an executive agency ("appropriated-fund agency"), making it administratively, economically, and financially rigid and inflexible.

This change by Law 96-70 is contrary to the Treaty and results in a series of provisions that so distort the nature of the Panama Canal Commission as it was agreed upon by the two parties that my Government can only consider this Act, in its general content, to be illegal, contrary to the legitimate interests of both parties, unsuitable because of the modus operandi that it establishes, and unacceptable to the Republic of Panama for all of these reasons.

* * * * * * * * * * * * * * *

Sec. 1.2. Composition of the Board. (a) The Board of Directors is composed of nine members, five of whom are nationals of the United States, and four of whom are nationals of the Republic of Panama.

(b) There shall be a Chairman of the Board of Directors, elected by members, who shall preside at all meetings.

(Cross Reference: For provisions of Treaty, Panama Canal Act, Legislative history, etc., see annotations following section 1.1 of the Regulations)

Sec. 1.3. Appointment and Term. (a) The members of the Board of Directors are appointed by the President of the United States for an indefinite term in accordance with Article III of the Panama Canal Treaty of 1977.

PANAMA CANAL TREATY

Article III

3. • • •

(a) The Panama Canal Commission shall be supervised by a Board composed of nine members, five of whom shall be nationals of the United States of America, and four of whom shall be Panamanian nationals proposed by the Republic of Panama for appointment to such positions by the United States of America in a timely manner.

P.L. 96-70 93 Stat.457 Sec. 1102(b)

(b) The President shall appoint the members of the Board. The members of the Board who are United States nationals shall be appointed by and with the advice and consent of the Senate. Each member of the Board shall hold office at the pleasure of the President and, before assuming the duties of such office, shall take an oath to discharge faithfully the duties of his office. Members of the Board shall serve without compensation but shall be allowed travel or transportation expenses, including per diem in lieu of subsistence, in accordance with section 1107 of this Act.

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Paragraph (b) of section 1102 provides for appointment of the supervisory board by the President with Senate confirmation of the members who are nationals of the United States. Provision that the members serve at the pleasure of the President, without fixed terms, reinforces other provisions of the bill intended to insure that the operation of the Canal will be fully responsive to U.S. Government policy.

(b) The Board of Directors may elect or appoint such other officers and agents as it shall deem necessary or as business of the Commission may require, in carrying out the provisions of the Panama Canal Treaty of 1977, each of whom shall hold office for such period, have such authority and perform such duties as the Board of Directors may prescribe from time to time.

PANAMA CANAL TREATY

Article III

Canal Operation and Management

1. The Republic of Panama, as territorial sovereign, grants to the United States of America the rights to manage, operate, and maintain the Panama Canal, its complementary works, installations and equipment and to provide for the orderly transit of vessels through the Panama Canal. The United States of America accepts the grant of such rights and undertakes to exercise them in accordance with this Treaty and related agreements.

2. In carrying out the foregoing responsibilities, the United States of America may:

• • •

(e) Regulate relations with employees of the United States Government;

PUBLIC LAW 96-70—SEPT. 27, 1979 93 STAT. 461

APPOINTMENT AND COMPENSATION; DUTIES

Sec. 1202. (a) In accordance with this chapter, the Panama Canal Commission may appoint without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service, fix the compensation of, and define the authority and duties of, officers, agents, attorneys, and employees (other than the Administrator, Deputy Administrator, and Chief Engineer) necessary for the management, operation, and maintenance of the Panama Canal and its complementary works, installations, and equipment.

(b) Individuals serving in any Executive agency (other than the Commission) or the Smithsonian Institution, including individuals serving in the uniformed services, may, if appointed under this section or section 1103 or 1104 of this Act, serve as officers or employees of the Commission.

Sec. 1.4 Appointment Affidavit. Prior to assuming his position, each member of the Board of Directors shall complete an appointment affidavit administered by a Commission official signifying his commitment to faithfully discharge the duties of his position. His affidavit signifies the formal assumption of the office and shall be filed as official records of the Board of Directors.

93 STAT. 460 PUBLIC LAW 96-70—SEPT. 27, 1979

(b) The President shall appoint the members of the Board. The members of the Board who are United States nationals shall be appointed by and with the advice and consent of the Senate. Each member of the Board shall hold office at the pleasure of the President and, before assuming the duties of such office, shall take an oath to discharge faithfully the duties of his office. Members of the Board shall serve without compensation but shall be allowed travel or transportation expenses, including per diem in lieu of subsistence, in accordance with section 1107 of this Act.

House Report 96-98 Part I
Page 43

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Section 102(b) continues the requirement of 2 C.Z. Code 66, applicable to the Board of Directors of the Panama Canal Company that the members of the Board take an oath faithfully to discharge the duties of their office. This requirement requires an oath substantially less comprehensive than that established for officers of the United States by 5 U.S.C. § 3331.

Sec. 1.5 Regular Meetings. (a) Regular meetings of the Board of Directors shall be held at least quarterly at a place and on such dates as may be agreed by the Board of Directors or as designated by the Chairman of the Board. Members shall be notified of meeting by telephone, with written notice dispatched immediately thereafter, a minimum of 15 calendar days prior to a scheduled meeting. At least two regular meetings per year shall be held in Panama.

P.L. 96-70
Section 1102(c)

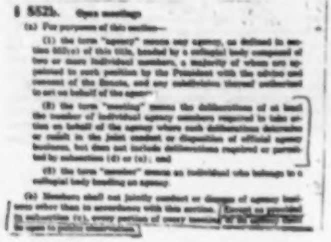
(c) The Board shall hold meetings as provided in regulations adopted by the Commission and approved by the Secretary of Defense. A quorum for the transaction of business shall consist of a majority of the Board members of which a majority of those present are nationals of the United States.

PRIOR LAW
CANAL ZONE CODE
TITLE 2 § 63(c)
Repealed by P.L. 96-70

(c) The directors, of whom a majority constitute a quorum for the transaction of business, shall hold meetings as provided by the bylaws of the Panama Canal Company.

(b) Board meetings shall not be open to the public. Officials and staff of the Commission, and others, may attend such portions of meetings as they are invited to by the Chairman, except that, the Administrator and Deputy Administrator shall be invited to attend all Board meetings. In addition, Panamanian and U.S. Board members, as groups, may bring expert advisors to Board meetings. Such advisors may only address the Board with the consent of the Board.

GOVERNMENT IN THE SUNSHINE ACT
5 U.S.C. 552b



§ 552b. Open meetings

22

Sec. 1.6. Availability of Records. The Board of Directors shall have access at all times to financial and operational records maintained by the Commission.

23

Sec. 1.7. Quorum. A quorum for the transaction of business shall consist of a minimum of five Board members of which a majority of those present are nationals of the United States. It is the intention of the Board that a maximum number of United States and Republic of Panama Board members be present at each Board meeting.

P.L. 96-70

Sec. 1102(c)

(c) The Board shall hold meetings as provided in regulations adopted by the Commission and approved by the Secretary of Defense. A quorum for the transaction of business shall consist of a majority of the Board members of which a majority of those present are nationals of the United States.

Sec. 1.8. Voting. Action shall be by a majority vote of the members present. Members shall vote in accordance with the instructions of their respective governments.

1977 TREATY	P.L. 96-70 Sec. 1102(a)
See Annotations under section 1.1 of the Regulations	**Members of the Board who are nationals of the United States shall cast their votes as directed by the Secretary of Defense or his designee.**

Sec. 1.9. Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board at the request of any member. Members shall be notified of the meeting by telephone, with written notice dispatched immediately thereafter, a minimum of 5 calendar days prior to a scheduled meeting, of the time, place and purpose of meeting.

Sec. 1.10. Per Diem Allowance and Travel. While away from home or regular place of business, each member of the Board of Directors shall be paid per diem and travel expenses in connection with attendance at meetings, time spent on special service of the Commission, or while traveling on Commission business.

(Cross Reference: See sec. 3.4 of the Regulations for provisions relating to travel allowances for members of Committees established by the Board.)

P.L. 96-70 93 Stat. 457

Sec. 1102(b)

* * *

Members of the Board shall serve without compensation but shall be allowed travel or transportation expenses, including per diem in lieu of subsistence, in accordance with section 1107 of this Act.

93 Stat. 458

TRAVEL EXPENSES

Sec. 1107. While away from their homes, regular places of business, or official stations in performance of services under this chapter, members of the Board of the Commission and the representatives of the United States on the Consultative Committee referred to in section 1105 of this Act and on the Joint Commission on the Environment referred to in section 1106 of this Act shall be allowed travel or transportation expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5, United States Code.

5 U.S. CODE 5703

§ 5703. Per diem, travel, and transportation expenses; experts and consultants; individuals serving without pay

An employee serving intermittently in the Government service as an expert or consultant and paid on a daily when-actually-employed basis, or serving without pay or at $1 a year, may be allowed travel or transportation expenses, under this subchapter, while away from his home or regular place of business and at the place of employment or service. As amended Pub. L. 91–114, § 2, Nov. 10, 1969, 83 Stat. 190; Pub. L. 94–22, § 4, May 19, 1975, 89 Stat. 85.

1975 Amendment. Pub. L. 94–22 struck out separate provisions for per diem allowances of employees serving as experts, consultants, or serving without pay or at $1 a year.

1969 Amendment. Subsec. (c)(1). Pub. L. 91–114 increased the per diem allowance for travel inside the continental United States from not to exceed the rate of $16 to not to exceed the rate of $25.

Subsec. (d). Pub. L. 91–114 in cl. (1) increased the amount authorized to be named in the travel authorization for each day in a travel status inside the continental United States from not to exceed $30 to not to exceed $40, and in cl. (2) increased the amount authorized to be named in the travel authorization for each day in a travel status outside the continental United States from not to exceed the maximum per diem allowance plus $10 to not to exceed the maximum per diem allowance plus $18.

Legislative History. For legislative history and purpose of Pub. L. 91–114, see 1969 U.S. Code Cong. and Adm. News, p. 1249. See, also, Pub. L. 94–22, 1975 U.S. Code Cong. and Adm. News, p. 188.

ARTICLE II

Offices

Sec. 2.1. Offices. The principal office of the Panama Canal Commission shall be located in the Republic of Panama in one of the areas made available for the use of the United States pursuant to the Panama Canal Treaty of 1977 and related agreements. Branch offices will be maintained at Washington, D.C., and such other places as the Board of Directors may direct.

PRIOR LAW
2 Canal Zone Code 61
(Repealed by P.L. 96-70)

§ 61. Continuation, purposes, offices and residence of the Company

* * * *

(c) The principal offices of the Company shall be in the Canal Zone, but the Company may establish agencies or branch offices in such other places as it deems necessary or appropriate in the conduct of its business. Within the meaning of the laws of the United States relating to venue in civil actions, the Company is an inhabitant and resident of the Canal Zone and of the District of Columbia.

ARTICLE III

Committees

Sec. 3.1. Executive Committee. (a) The Board shall elect annually from among its members an Executive Committee consisting of four members in addition to the Chairman of the Board. Two of the members shall be Panamanian nationals and two shall be U.S. nationals. Notice shall be sent to all members in writing or by other means of communication when an issue is to be considered by the Committee. Three or more members shall constitute a quorum when they include the Chairman and one U.S. national.

(b) During the intervals between meetings of the Board of Directors, the Executive Committee may exercise all the powers of the Board of Directors in acting on matters upon recommendation of the Administrator that disposition of the matter cannot, because of its urgency, await the next Board meeting.

(c) Meetings of the Committee may be called by the Chairman upon his own initiative or at the request of any member. Such meetings may be conducted and issues before the Executive Committee decided, by telephone or other such means in lieu of physical attendance by Executive Committee members, if the Chairman determines that the issue before the Committee is of such an emergency nature that time is of the essence.

(d) The Board may affirm, alter or revoke any action of the Committee.

P.L. 96-70 93 Stat 457

Sec. 1102. Supervisory Board

* * *

(c) The Board shall hold meetings as provided in regulations adopted by the Commission and approved by the Secretary of Defense. A quorum for the transaction of business shall consist of a majority of the Board members of which a majority of those present are nationals of the United States.

Cross Reference:

See Sec. 1.7. Quorum

Sec. 3.2. Standing and Special Committees. (a) For the proper performance of its functions, the Board of Directors may establish such other committees as necessary. Any such committee shall be composed of four members of the Board of Directors, of whom two shall be nationals of the United States, and two shall be Panamanian nationals.

(b) The function of such Committees shall be to provide support to the Board of Directors and recommend to the Board of Directors necessary or appropriate action.

(c) The Board of Directors shall establish rules on all matters relative to the Committees referred to in this article.

(d) The Board of Directors may reach a decision without waiting for the competent Committee's report or proposal.

(e) Committees may conduct their business by means other than a meeting if all members of the committee consent.

(f) A committee quorum shall consist of a majority of the members and action shall be by a majority of the members present.

Sec. 3.3. Committee Procedure. Each committee shall keep minutes of its proceedings and report the same to the Board at its next meeting. Any member of the Board shall have access to the information and records of any committee at any time. The Board may affirm, alter or revoke any action of any committee.

Sec. 3.4. Per Diem and Travel Expenses of Committees. While away from home or regular place of business, each member of a committee shall be paid per diem and travel expenses in connection with attendance at meetings of a committee or while traveling on committee business in accordance with regulations pertaining to the establishment of the Committee.

P.L. 96-70 93 Stat. 459

TRAVEL EXPENSES

Sec. 1107. While away from their homes, regular places of business, or official stations in performance of services under this chapter, members of the Board of the Commission and the representatives of the United States on the Consultative Committee referred to in section 1105 of this Act and on the Joint Commission on the Environment referred to in section 1106 of this Act shall be allowed travel or transportation expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5, United States Code.

Cross Reference: See Sec. 1.10 of the Regulations for provisions governing travel allowances for members of the Board.

ARTICLE IV

Administration

Sec. 4.1. Administrator. (a) The Administrator, appointed by the President in accordance with the provisions of Article III 3(c) of the Panama Canal Treaty of 1977 shall, under the supervision and direction of the Board of Directors, be the chief executive officer of the Commission, and have general and active control of its affairs and business and general supervision over its officials, agents, attorneys, and employees.

(b) The Administrator shall have the power, subject to the regulations promulgated by the Board of Directors and to the laws that the Panama Canal Treaty of 1977 and related agreements permit to be applied, to appoint, remove, fix the compensation and prescribe the conditions of employment of officials and employees of the Panama Canal Commission, other than those appointed by the Board of Directors; provided, however, that matters of general policy involved shall be subject to the authority of the Board of Directors.

TEXT—PANAMA CANAL TREATY

Article III

CANAL OPERATION AND MANAGEMENT

(c) The United States of America shall employ a national of the United States of America as Administrator of the Panama Canal Commission, and a Panamanian national as Deputy Administrator, through December 31, 1989. Beginning January 1, 1990, a Panamanian national shall be employed as the Administrator and a national of the United States of America shall occupy the position of Deputy Administrator. Such Panamanian nationals shall be proposed to the United States of America by the Republic of Panama for appointment to such positions by the United States of America.

(d) Should the United States of America remove the Panamanian national from his position as Deputy Administrator, or Administrator, the Republic of Panama shall propose another Panamanian national for appointment to such position by the United States of America.

P.L. (96-70 93 Stat 457

TITLE I—ADMINISTRATION AND REGULATIONS

Chapter 1—Panama Canal Commission

ESTABLISHMENT OF COMMISSION

Sec. 1101. There is established in the executive branch of the United States Government an agency to be known as the Panama Canal Commission (hereinafter in this Act referred to as the "Commission"). The Commission shall, under the general supervision of the Board established by section 1102 of this Act, be responsible for the maintenance and operation of the Panama Canal and the facilities and appurtenances related thereto. The authority of the President with respect to the Commission shall be exercised through the Secretary of Defense.

ADMINISTRATOR

Sec. 1103. There shall be an Administrator of the Commission, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold office at the pleasure of the President.

Sec. 1202. (a) In accordance with this chapter, the Panama Canal Commission may appoint without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service, fix the compensation of, and define the authority and duties of, officers, agents, attorneys, and employees (other than the Administrator, Deputy Administrator, and Chief Engineer) necessary for the management, operation, and maintenance of the Panama Canal and its complementary works, installations, and equipment.

(b) Individuals serving in any Executive agency (other than the Commission) or the Smithsonian Institution, including individuals serving in the uniformed services, may, if appointed under this section or section 1103 or 1104 of this Act, serve as officers or employees of the Commission.

Sec. 4.2. Deputy Administrator. The Deputy Administrator, appointed by the President in accordance with the provisions of Article III 3(c) of the Panama Canal Treaty of 1977, shall be the principal assistant to the Administrator. During the Administrator's temporary absence from duty with the Commission, or during his disability, or upon his express delegation, the Deputy Administrator shall perform all the duties of the Administrator, and, when so acting, shall have all the powers of, and be subject to all restrictions upon, the Administrator. The Deputy Administrator shall have such other power and shall perform such duties as may be assigned to him by the Board of Directors or the Administrator.

TEXT—PANAMA CANAL TREATY

Article III

Canal Operation and Management

* * *

(c) The United States of America shall employ a national of the United States of America as Administrator of the Panama Canal Commission, and a Panamanian national as Deputy Administrator, through December 31, 1989. Beginning January 1, 1990, a Panamanian national shall be employed as the Administrator and a national of the United States of America shall occupy the position of Deputy Administrator. Such Panamanian nationals shall be proposed to the United States of America by the Republic of Panama for appointment to such positions by the United States of America.

(d) Should the United States of America remove the Panamanian national from his position as Deputy Administrator, or Administrator, the Republic of Panama shall propose another Panamanian national for appointment to such position by the United States of America.

PUBLIC LAW 96-70—SEPT. 27, 1979 93 STAT. 456

TITLE I—ADMINISTRATION AND REGULATIONS

CHAPTER 1—PANAMA CANAL COMMISSION

ESTABLISHMENT OF COMMISSION

SEC. 1101. There is established in the executive branch of the United States Government an agency to be known as the Panama Canal Commission (hereinafter in this Act referred to as the "Commission"). The Commission shall, under the general supervision of the Board established by section 1102 of this Act, be responsible for the maintenance and operation of the Panama Canal and the facilities and appurtenances related thereto. The authority of the President with respect to the Commission shall be exercised through the Secretary of Defense.

DEPUTY ADMINISTRATOR AND CHIEF ENGINEER

SEC. 1104. (a) There shall be a Deputy Administrator and a Chief Engineer of the Commission, both of whom shall be appointed by the President. The Deputy Administrator and the Chief Engineer shall perform such duties as may be prescribed by the President.

(b) The Deputy Administrator and the Chief Engineer shall each be paid compensation at a rate of pay established by the President which does not exceed the rate of basic pay in effect for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code.

(Note: The authority of the President under this section is delegated to the Secretary of Defense by Section 1-302 of Executive Order 12215 of May 27, 1980)

SEC. 1202. (a) In accordance with this chapter, the Panama Canal Commission may appoint without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service, fix the compensation of, and define the authority and duties of, officers, agents, attorneys, and employees (other than the Administrator, Deputy Administrator, and Chief Engineer) necessary for the management, operation, and maintenance of the Panama Canal and its complementary works, installations, and equipment.

(b) Individuals serving in any Executive agency (other than the Commission) or the Smithsonian Institution, including individuals serving in the uniformed services, may, if appointed under this section or section 1103 or 1104 of this Act, serve as officers or employees of the Commission.

Sec. 4.3. Secretary. (a) There shall be a Secretary appointed by the Board of Directors who shall assist the Board in the conduct of its affairs. The Secretary shall, on behalf of the Chairman, issue the notices of meetings to members of the Board, and shall attend all meetings of the Board and its committees and record all proceedings thereat in a book to be kept for that purpose. He shall perform such other duties as may be assigned to him by the Chairman of the Board or the Administrator.

(b) The Secretary shall direct the Branch Office in Washington, D.C., established pursuant to Section 2.1.

ARTICLE V

General Provisions

Sec. 5.1. Language. Board members may speak at Board meetings in either English or Spanish.

Sec. 5.2. Amendment. These regulations may be amended at any meeting of the Board of Directors upon written notice to each Board member containing a statement of the proposed amendment at least five days prior to such meeting.

Federal Register
Vol. 45, No. 105
Thursday, May 29, 1980

Presidential Documents

Title 3—

The President

Executive Order 12215 of May 27, 1980

Delegation of Panama Canal Functions

By the authority vested in me as President of the United States of America by the Panama Canal Code (76A Stat. 1), as amended, by the Panama Canal Act of 1979 (93 Stat. 452; 22 U.S.C. 3601 *et seq.*), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

1–1. The Secretary of Defense.

1–101. The Secretary of Defense shall develop for the President's consideration an appropriate legislative proposal as required by Section 3(d) of the Panama Canal Act of 1979 (93 Stat. 456; 22 U.S.C. 3602(d)). The Secretary of Defense shall coordinate development of this proposal with the Secretary of State and the heads of other interested Executive agencies.

1–102. The function vested in the President by Section 1212(d)(1) of the Panama Canal Act of 1979 (93 Stat. 464; 22 U.S.C. 3652(d)(1)) to exclude employees of, or positions within, the Department of Defense from coverage under any provision of subchapter II, Chapter 2 of Title I of the Panama Canal Act of 1979, is delegated to the Secretary of Defense.

1–103. The function vested in the President by Section 1281(b) of Title 6 of the Panama Canal Code (76A Stat. 455; 6 P.C.C. 1281(b)), as amended, with respect to areas and installations made available to the United States pursuant to the Agreement in Implementation of Article IV of the Panama Canal Treaty of 1977 is delegated to the Secretary of Defense.

1–104. The function vested in the President by Section 1701 of the Panama Canal Act of 1979 (93 Stat. 492; 22 U.S.C. 3801), with respect to regulations applicable within the areas and installations made available to the United States pursuant to the Agreement in Implementation of Article IV of the Panama Canal Treaty of 1977, is delegated to the Secretary of Defense.

1–105. The functions vested in the President by Sections 1243(c)(1) and 2401 of the Panama Canal Act of 1979 (93 Stat. 474 and 495; 22 U.S.C. 3681(c)(1) and 3851) are delegated to the Secretary of Defense.

1–106. The functions vested in the President by Section 1502(a) of the Panama Canal Act of 1979 (93 Stat. 488; 22 U.S.C. 3702(a)) are delegated to the Secretary of Defense.

1–2. Coordination of Pay and Employment Practices.

1–201. In order to coordinate the policies and activities of agencies under subchapter II of Chapter 2 of Title I of the Panama Canal Act of 1979 (93 Stat. 463; 22 U.S.C. 3651 *et seq.*), each agency shall periodically consult with the Secretary of Defense with respect to the establishment of rates of pay, in order to develop compatible or unified systems for basic pay. In addition, each agency shall consult with the Secretary of Defense on such other matters as the Secretary may deem appropriate in order to develop compatible or unified employment practices.

1–202. The head of each agency shall, upon approval by the Secretary of Defense, adopt a schedule of basic pay pursuant to Section 1215 of the Panama Canal Act of 1979 (93 Stat. 465; 22 U.S.C. 3655) and adopt regulations governing other matters relating to pay and employment practices.

1-203. The authority vested in the President by Section 1223(a) of the Panama Canal Act of 1979 to coordinate the policies and activities of agencies (93 Stat. 467; 22 U.S.C. 3663(a)) is delegated to the Secretary of Defense. The Secretary shall exercise such functions in a manner which is in accord with the provisions of Sections 1-201 and 1-202 of this Order.

1-3. Panama Canal Commission.

1-301. The functions vested in the President and delegated to the Secretary of Defense in this Section 1-3 of this Order shall be carried out by the Secretary of Defense, who shall, in carrying out the said functions, provide, by redelegation or otherwise, for their performance, in a manner consistent with paragraph 3 of Article III of the Panama Canal Treaty of 1977, by the Panama Canal Commission.

1-302. The authority of the President under Section 1104 of the Panama Canal Act of 1979 (93 Stat. 457; 22 U.S.C. 3614) to fix the compensation of and to define the authorities and duties of the Deputy Administrator and the Chief Engineer is delegated to the Secretary of Defense.

1-303. The functions vested in the President by Sections 1418, 1801, and 2206 of the Panama Canal Act of 1979 (93 Stat. 487, 492, and 494; 22 U.S.C. 3778, 3811, and 3844) are delegated to the Secretary of Defense.

1-304. The authority of the President under Section 1701 of the Panama Canal Act of 1979 (93 Stat. 492; 22 U.S.C. 3801) with respect to regulations applicable within the areas and installations made available to the United States pursuant to the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 is delegated to the Secretary of Defense.

1-305. The function vested in the President by Section 1281(b) of Title 6 of the Panama Canal Code (76A Stat. 455; 6 P.C.C. 1281(b)), as amended, with respect to areas and installations in the Republic of Panama made available to the United States pursuant to the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 is delegated to the Secretary of Defense.

1-306. The functions vested in the President by Sections 82 and 86 of Title 3 of the Panama Canal Code (76A Stat. 54 and 55; 3 P.C.C. 82 and 86), as amended, are delegated to the Secretary of Defense.

1-307. The functions vested in the President by subsections (a), (b) and (c) of Section 8146 of Title 5 of the United States Code, as they apply to the employees of the Panama Canal Commission, are delegated to the Secretary of Defense.

1-308. Except to the extent heretofore delegated, the functions vested in the President pursuant to subchapter II of Chapter 2 of Title I of the Panama Canal Act of 1979 (93 Stat. 463) are hereby delegated to the Secretary of Defense.

1-4. Other Agencies.

1-401. The functions vested in the President by Sections 1111 and 3301 of the Panama Canal Act of 1979 (93 Stat. 459 and 497; 22 U.S.C. 3621 and 3871), are delegated to the Secretary of State. The Secretary shall perform these functions in coordination with the Secretary of Defense.

1-402. The functions vested in the President by Sections 1112(d), 1344(b), and 1504(b) of the Panama Canal Act of 1979 (93 Stat. 460, 464, and 466; 22 U.S.C. 3622(d), 3754(b), and 3784(b)) are delegated to the Secretary of State.

1-403. The functions vested in the President by Section 1243(a)(1) of the Panama Canal Act of 1979 (93 Stat. 473; 22 U.S.C. 3661(a)(1)) are delegated to the Director of the Office of Personnel Management.

1-404. Paragraphs (22) and (23) of Section 1 of Executive Order No. 11609, as amended, and Executive Order No. 11713 are revoked.

Jimmy Carter

THE WHITE HOUSE,
May 27, 1980.

[FR Doc. 80-16422
Filed 5-27-80; 3:44 pm]
Billing code 3195-01-M

"GOVERNMENT IN THE SUNSHINE ACT"

[illegible]

cording, or minutes (as required by paragraph (1)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the agency determines to contain information which may be withheld under subsection (c). Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later.

(g) Each agency subject to the requirements of this section shall, within 180 days after the date of enactment of this section, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the *Federal Register* of at least thirty days and opportunity for written comment by any person, promulgate regulations to implement the requirements of subsections (b) through (f) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Subject to any limitations of time provided by law, any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (b) through (f) of this section and to require the promulgation of regulations that are in accord with such subsections.

(h)(1) The district courts of the United States shall have jurisdiction to enforce the requirements of subsections (b) through (f) of this section by declaratory judgment, injunctive relief, or other relief as may be appropriate. Such actions may be brought by any person against an agency prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Such actions may be brought in the district court of the United States for the district in which the agency meeting is held or in which the agency in question has its headquarters, or in the District Court for the District of Columbia. In such actions a defendant shall serve his answer within thirty days after the service of the complaint. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of the transcript, electronic recording, or minutes of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the parties, may grant such equitable relief as it deems appropriate, including granting an injunction against future violations of this section or ordering the agency to make available to the public such portion of the transcript, recording, or minutes of a meeting as is not authorized to be withheld under subsection (c) of this section.

(2) Any Federal court otherwise authorized by law to review agency action may, at the application of any person properly participating in the proceeding pursuant to other applicable law, inquire into violations by the agency of the requirements of this section and afford such relief as it deems appropriate. Nothing in this section authorizes any Federal court having jurisdiction solely on the basis of paragraph (1) to set aside, enjoin, or invalidate any agency action (other than an action to close a meeting or to withhold information under this section) taken or discussed at any agency meeting out of which the violation of this section arose.

(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (g) or (h) of this section, except that costs may be assessed against the plaintiff only where the court finds that the suit was initiated by the plaintiff primarily for frivolous or dilatory purposes. In the case of assessment of costs against an agency, the costs may be assessed by the court against the United States.

(j) Each agency subject to the requirements of this section shall annually report to Congress regarding its compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section, including any costs assessed against the agency in such litigation (whether or not paid by the agency).

(k) Nothing herein expands or limits the present rights of any person under section 552 of this title, except that the exemptions set forth in subsection (c) of this section shall govern in the case of any request made pursuant to section 552 to copy or inspect the transcripts, recordings, or minutes described in subsection (f) of this section. The requirements of chapter 33 of title 44, United States Code, shall not apply to the transcripts, recordings, and minutes described in subsection (f) of this section.

(l) This section does not constitute authority to withhold any information from Congress, and does not authorize the closing of any

agency meeting or portion thereof required by any other provision of law to be open.

(m) Nothing in this section authorizes any agency to withhold from any individual any record, including transcripts, recordings, or minutes required by this section, which is otherwise accessible to such individual under section 552a of this title.

Added Pub.L. 94-409, § 3(a), Sept. 13, 1976, 90 Stat. 1241.

Historical Note

References in Text. 180 days after the date of enactment of this section, referred to in subsec. (g), means 180 days after the date of enactment of Pub.L. 94-409, which was approved Sept. 13, 1976.

Chapter 33 of title 44, United States Code, referred to in subsec. (k), is chapter 33 of Title 44, Public Printing and Documents.

Effective Date. Section 6 of Pub.L. 94-409 provided that:

"(a) Except as provided in subsection (b) of this section, the provisions of this Act [see Short Title note set out under this section] shall take effect 180 days after the date of its enactment [Sept. 13, 1976].

"(b) Subsection (g) of section 552b of title 5, United States Code, as added by section 3(a) of this Act [subsec. (g) of this section] shall take effect upon enactment [Sept. 13, 1976]."

Short Title. Section 1 of Pub.L. 94-409 provided: "That this Act [enacting this section, amending sections 551, 552, 556, and 557 of this title, section 10 of Appendix I of this title, and section 410 of Title 39, and enacting provisions set out as notes under this section] may be cited as the 'Government in the Sunshine Act'."

Declaration of Policy and Statement of Purpose. Section 2 of Pub.L. 94-409 provided that: "It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. It is the purpose of this Act [see Short Title note set out under this section] to provide the public with such information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities."

Legislative History. For legislative history and purpose of Pub.L. 94-409, see 1976 U.S.Code Cong. and Adm.News, p. 2183.

Library References

Administrative Law and Procedure ⚖ 413.

C.J.S. Public Administrative Bodies and Procedure §§ 145, 146.

West's Federal Forms

Answers, see § 2911 et seq.
Declaratory judgments, matters pertaining to, see § 4781 et seq.
Jurisdiction and venue in district courts, matters pertaining to, see § 1000 et seq.
Preliminary injunctions and temporary restraining orders, matters pertaining to, see § 4971 et seq.
Taxation of costs, see §§ 4550 to 4555.

Code of Federal Regulations

Civil Service Commission, see 5 CFR 295.101 et seq.
Commission on Civil Rights, see 45 CFR 702.50 et seq.
Commodity Futures Trading Commission, see 17 CFR 147.1 et seq.
Consumer Product Safety Commission, see 16 CFR 1013.1 et seq.
Council on Environmental Quality, see 40 CFR 1517.1 et seq.
Department of Agriculture, Commodity Credit Corporation, see 7 CFR 1409.1 et seq.
Department of Defense, see 32 CFR 292a.1 et seq.
Department of Health, Education, and Welfare,
  National Institute of Education, see 45 CFR 1403.1 et seq.
  Social Security Administration, see 20 CFR 403.1 et seq.

Letter, President Royo to
President Carter, January 10, 1980.
(Cong. Record March 11, 1980, S2399)

PANAMA,
January 10, 1980.

Your Excellency JIMMY CARTER,
President of the United States of America,
White House.

DEAR PRESIDENT: In my letter of 11 July 1979, I presented to you the objections of the Panamanian Government to several articles of the bill HR-111, under discussion at the time by the U.S. Congress, which violated the spirit and letter of the Panama Canal treaty or were not acceptable because they could create difficulties in the implementation of the treaty. Although amendments were made later to the bill which after it was approved was registered as Public Law 96-70 of 27 September 1979, most of the resolutions to which I objected in my letter were not amended, at least not in the sense and way established for the accurate implementation of the obligations contracted by the signees of the treaty.

Three months have gone by since the implementation of the treaty and during this time I have followed the course of the works of the canal operation, mostly aided by information provided by our officials from the Canal Authority. In studying and analyzing this information, I have become aware that facts corroborate my government's presumptions regarding the unfavorable consequences to the rights and just aspirations of my country and of the difficulties in the administration of the canal which inevitably would result from some dispositions of bill HR-111, which now is Law 96-70.

For this reason I am writing you this letter, with the main purpose of submitting to you the viewpoint of my government and the Panamanian people regarding the aforementioned situations. We do this in an effort on our part to see that good relations and mutual understanding prevail between our countries, in everything related to the Panama Canal.

The first and most general observation is that the contents of Law 96-70 are not the legal instruments for the implementation according to the norms and basic objectives of the 1977 treaty. The treaty established that U.S. rights and responsibilities were to be carried out by a specialized government agency, the Panama Canal Commission, and that the Republic of Panama would as a basic principle be granted a growing participation in its structure, functioning, administration, protection and defense of the canal, as established in Article 1, Paragraph 3, of the treaty. Law 96-70 radically differs from the concept of the treaty regarding the Canal Commission by making it into an executive agency ("appropriated-fund agency"), which rigidly binds it and takes away its administrative, economic and financial flexibility.

A series of dispositions which distorted the nature of the Panama Canal Commission have been derived from the interpretation of Law 96-70 which is contrary to the treaty, as was agreed by both parties. This has happened in such a way that my government cannot but consider that the law, in its general content, is illegal, contrary to the legitimate interests of both parties, not acceptable because of the modus operandi it establishes and unacceptable in every way for the Republic of Panama.

It would be inadequate to present in this letter full details of the direct objections which could be made against many articles of Law 96-70. In its full extension, my letter of 11 July 1979 serves the purpose. However, I must refer to some aspects which I cannot overlook.

On creating the Canal Commission, Section 1101 of the law closes with the disposition that "the authority of the president of the commission will be exercised through the Secretary of Defense." This disposition, which apparently is a simple formality, carries with it a special objective, which consists of placing the commission under the total dependency of that department, as a sort of appendix to it.

This double purpose as published can be seen in Section 1102(A), which establishes that one of the members of the supervisory board is the Secretary of Defense, and that the U.S. members of the board will vote according to the instructions of the Secretary of Defense, and in Section 1102(C) which determines that "the board will hold meetings according to the bylaws adopted by the commission and approved by the Secretary of Defense." Already in the title corresponding to Section 1102, the law explicitly describes the board as a supervisory board, deviating from the terminology employed in the Spanish text of the treaty, which is also authentic.

This is going to the extreme of converting it into a supervisory board when it should not be less than a board of directors. Thus we see that the secretary of state represents everything: The means for the president to exercise his authority over the commission by being a member of the board; the source of instructions telling the majority of the board how to vote; and being the one that approves the regulations of the commission above the board.

For this reason the law leaves the Canal Commission in a subordinate position as a dependency of the Defense Department, just as the Panama Canal Company was to a certain extent until 1 October 1979 under the control of that same department, according to the law of the Canal Zone.

And if the treaty conceived the commission as a newly created legal agency to exercise the U.S. rights and responsibilities, the the open subordination of the commission to the Defense Department effected under this law violates, through an unusual disavowal, the special and independent legal status granted to the commission by the treaty.

It was enough, and not juridically objectionable, for Section 1102(A) to designate the defense secretary as member of the board of directors. However, the turning of the Canal Commission into an appendix of that department to what invalidates in practice the concept in regard to the commission contained in the treaty.

This merits a most categorical opposition on the part of the Republic of Panama because Panama did not agree in the treaty that the agency which will manage the canal operations—in which there are four Panamanian directors and an assistant administrator—would be—through an illegal mandate included in the law—inexplicably subordinated to the U.S. Defense Department, with the aggravating circumstance that—through an exorbitant demand—the law provides that a quorum will be constituted at all board sessions when an internal majority of U.S. members is present (Section 1102, C).

The U.S. Government should be as seriously concerned as is the Panamanian Government over the limitation of funds with which Law 96-70 jeopardizes the efficient handling of canal operations by the commission. Because it was created as an executive agency, its budget appropriations require approval by the U.S. Congress (Section 1302, c. 1). In addition,

Section 1302(C)(2) provides that no funds will be accredited for us by the Canal Commission during any fiscal year exceeding the commission's income during said period plus any available balance of the funds appropriated to it for the preceding fiscal year. Obviously, the objective of this restriction is to keep the U.S. Treasury from contributing to the payment of canal operating expenses.

To further tighten this financial squeeze, the House of Representatives Budget Appropriations Committee rejected the inclusion of two appropriations, of $2 million and of $5.9 million, in the Panama Canal Commission's 1980 budget.

To be charged to the Federal Treasury, these funds were to be used to pay off the debts of the defunct Panama Canal Company that were outstanding at the close of business on 30 September 1979. The committee ignored the fact that the $5.9 million would be recovered by the collection of moneys owed to the Panama Canal Company.

Section 1302 (A) of Law 96-70 provides for the establishment, effective 1 October 1979, of a Panama Canal contingency fund of $40 million to cover unexpected expenses and to back up appropriations to insure the continuous, efficient and secure operation of the canal. The same committee also opposed the approval of an appropriation to finance the fund, maintaining that financing should come from the canal tolls.

The committee also ignored the fact that moneys drawn from the fund would be replaced by the commission from its income.

The decisions mentioned above render the Panama Canal Commission helpless on those fortuitous occasions in which it will require funds to cover unexpected expenses or when the actual expenses exceed budgeted amounts.

A delicate situation might develop since the dredging of the canal and the correction of dangerous curves on the canal route are necessary to keep the canal's passageways permanently efficient for the transit of ships. One cannot diminish the importance of the fact that the interoceanic waterway already has been in continuous use for more than 6 decades and that its installations have deteriorated, requiring constant, intensive and increasing maintenance.

Because of the dispositions of Law 96-70 which negatively affect the possibilities of financing, the commission might find itself in the position of adopting highly inconvenient measures such as decreasing regular maintenance activities, deferring the completion of improvement projects that are being studied or are underway, or by trying to reduce taxpayers by cutting back its labor force.

Contrasting with the limitation of funds described above, the United States has the signed obligation to maintain the waterway in an appropriate condition for its efficient, continuous and secure operation and to transfer the canal to the Republic of Panama the last day of the present century in good working condition.

Noncompliance or negligence in fulfilling these obligations would constitute a clear violation of the treaty. On the subject of payments to the Republic of Panama as stipulated in the treaty, Law 96-70 also does not conform because it specifies that the Canal Commission must pay from its funds the $10 million in public services that the Republic of Panama is going to provide in the townsites where U.S. employees reside.

This disposition is unjust, to say the least, if one considers that this expense is more than covered by the taxes that the U.S. canal workers contribute to the U.S. Treasury.

Among the economic compensations to Panama is also an annual payment of up to $10 million—payable from the surplus income from the canal operation—and the commission's expenses, with the stipulation that the amount not paid in any given year would be paid with the surplus from future years. It cannot be denied that in the treaty this last provision refers only to any payment balance pending in favor of Panama, and that no interpretation of Subparagraph C, Paragraph 4, Article XIII could be carried to the extreme [of construing] that it authorizes the accumulation of losses to charge them against the surplus of future years.

Nonetheless, this provision has been transformed by Law 96-70 into something totally contrary for, in accordance with Section 1341 (B), previous losses will be counted against any year's surplus. There can be no more open and flagrant violation of the treaty, since it only mentions "surplus balances," while the legal text mentions "accumulated losses."

Regarding this same economic right by Panama, it turns out that the treaty takes into consideration the commission's "expenses," while in its Sections 1341(B), 1311 (A) and 1341(E), Law 96-70 orders that no less than the "costs" listed in those sections be accounted against the revenues and for the purpose of making the payment to Panama. Expenses are generally expenditures in cash, while costs go beyond that, since they include special amounts, such as depreciation, reserves, and so forth.

This listing of costs, as a function of the commission's expenses, is illegitimate, particularly because its final result might represent an antijuridical dissipation of an economic right that emanates from the treaty. These costs, of course, do not represent a small amount. According to a report submitted by the administrator to the House of Representatives' Panama Canal Subcommittee, the 1980 budget allocations increase some of these costs to the following figures: (A) $14.6 million in interest for the nonrecovered U.S. investment in the construction of the canal; (B) $10.7 million to amortize the cost of the employees' anticipated optional retirement, in accordance with the special retirement law—a total of $25.3 million.

If the treaty recognized Panama's right to an annual payment chargeable to the surplus or surplus balances between revenues and expenses as part of a "just and equitable retribution for the national resources it has dedicated to the efficient functioning, running, maintenance, protection and defense of the canal" (Article XIII), Panama cannot agree to the solution unilaterally provided by Law 96-70, which visibly violates the treaty.

What this law has done regarding the salary system is worth noting with similar emphasis. It has removed the commission's employees from the "Fair Labor Standard Act," which recognized the salary increases agreed on for 1980 and 1981—these increases were higher than the ones now established—without consulting the workers and without their consent. On the basis of this regulation, the Canal Commission has put into effect the labor remuneration system that the Policies Coordinating Board approved for civilian personnel in September 1979. This system creates two plans and two different pay scales based on the distinction between old and new employees.

Furthermore, Law 96-70 Section 1225 (B)(1)(2), establishes that as of 1 October 1979, the salary for new canal employees must not be lower than $2.90 per hour, with an annual 2-percent increase. This provision does not agree with the treaty's stipulations aimed at preventing the impairment of labor conditions and terms in the canal area. Furthermore, the limitation of increases to 3 percent per year is unjustified.

It is thus necessary to adjust the labor retribution system to the treaty's stipulations. The commitment of maintaining the same conditions and terms of employment that existed in the canal area before the implementation of the treaty must be fulfilled by reestablishing the pay scale in effect before 1980 and 1981 and by implementing a unified and just salary policy, with uniform pay scales.

Since at the end of the present century the canal is to be transferred to the Republic of Panama and the latter must assume the responsibility for running it, Panama's increasing participation in the administration, protection and defense of the canal, which the treaty establishes, is of relevant significance because of its purpose. Its objective is not only the training of Panamanian personnel in all aspects of the administration and functioning of the canal so that this transference is carried out "in an orderly and efficient manner," as the treaty itself expresses.

This participation is also aimed at having Panama play an important role in everything connected with the canal. The joint organizations that the treaty establishes with their special functions materialize Panama's right to participate in the making of decisions connected with the canal.

Thus, the appointment of four Panamanian members to the commission's directive board and of a Panamanian assistant administrator in this commission constitutes Panamanian Representation at the commission's top directive levels, which the treaty specifically terms "the participation of Panamanians at the top levels of the commission's directorate." The Panamanian directors and assistant administrator are proposed by Panama; the latter even has the right to request the removal of any of the Panamanian directors; and this legally confirms their role as representatives of Panamanian interests within the commission.

Since the board of directors and the positions of administrator and deputy administrator are part of the Panama Canal Commission, a U.S. Government agency, it is within U.S. authority to appoint them. But the Panamanian directors and deputy administrator do not lose, by reason of such a technicality, their role as representatives of the interests of the Republic of Panama.

Nevertheless, Law 96-70 treats those officials in a way which is not in keeping with the situation drafted by the treaty. Section 1102(B) indiscriminately states that the board members will maintain their posts at the discretion of the U.S. President. However, this cannot be true of the Panamanian members, because the treaty contains a special procedure for their removal.

Section 1112(B) of the law establishes that the board will approve a "code of conduct" applicable to its members and officials and employees of the commission and that this code will contain provisions substantially the same as certain comparable U.S. laws and Panamanian legal provisions.

The application of the code of conduct to the Panamanian directors and deputy administrator violates their jurisdictional status which the treaty grants them as representatives of the interests of the Republic of Panama.

This violation is not lessened by the fact that the same Section 1112(B) has established that agreement will be reached with the Republic of Panama in which each nation will agree on adopting measures to insure that the board members will comply with the "code of conduct."

This is so, because Section (B) literally insures, independent of such agreements, "the jurisdiction which the United States may have with respect to the board members."

We are pleased that the respective U.S. members of the board of directors have finally been appointed. However, the excessive delay in designating the U.S. members has delayed their action.

And since the Canal Commission was supposed to begin functioning without interruption last 1 October, and in the absence of the board of directors, we have proceeded to make decisions, to define policies, to acquire obligations and to effect transactions which the Republic of Panama should have been advised of and which their representatives on the board of directors should have considered.

To bring things to their proper course, it is necessary that upon integrating this organization, the most important decisions on these elements adopted as of 1 October be reviewed to agree on what is pertinent.

In addition to this, given that the powers and functions of the board of directors and of the administrator and deputy administrator were not specified in the treaty, the problem arises over what must be accomplished by the two parties, to conform with the method of execution in the joint or bilateral statutes adopted in the treaty. It is inadvisable that the respective functions of the administrator and deputy administrator be regulated by informal understandings that would have a permanent effect, or that they be unilaterally regulated.

It is obvious to me that the administrator and deputy administrator, the two most prominent posts in the canal administration, in addition to the board of directors, function in the Canal Commission as the president and vice president of the defunct Panama Canal Company. This being so, the position and functions of the latter were transferred to the deputy administrator. Furthermore, the deputy administrator is the Republic of Panama's representative in the highest executive branch of the canal administration. It is he who safeguards the interests of the Panamanian Government and peoples, of the United States and canal users, because by working in concert with these three groups he guarantees that the canal will serve its function as an international transit waterway.

Consequently, the deputy administrator must have immediate, expeditious and constant access to all components of the canal administration and participate in all the decisions, both for the exercise of his powers and responsibilities, as well as to keep the Panamanian Government abreast of all that it is entitled to know as a partner in the canal enterprise. Therefore, the deputy administrator must be free of any obstacles or hindrances, particularly regarding documents dealing with the handling, operation and maintenance of the canal.

The most important matter is the adoption of a series of essential regulations to replace provisions of the code of federation regulations which do not conform to the new jurisdictional status of the interoceanic waterway. These regulations deal with virtually all or at least the most important aspects of the canal administration. Such a task must always consider, from drafting initial proposals and their discussion until their final adoption, the Republic of Panama.

The treaty created adequate binational organizations with this aim and allows the creation of others of a special nature if deemed advisable for the purpose set forth here. We must prevent the emergence of differences and controversies once the new regulations are implemented, because it would be more difficult to resolve them then.

The opportunity has arrived for designating the chief engineer, a post created by Law 96-70, alongside that of the deputy administrator of the commission. Since the treaty provides for the increasing participation of the Republic of Panama in all levels of employment of the commission, it would be advisable, by virtue of this principle, to choose a Panamanian citizen for this position, because Law 96-70, after creating the office of ombudsman, has restricted the appointment to that office to a U.S. citizen.

I believe some final considerations are in order and in them I must frankly convey my reflections on this matter. My participation in the decisive phase of the negotiations and, from a different level, in the arduous process of ratifying the canal treaty in the Senate and adopting the implementing legislation by the House of Representatives, leads me to make the clear and precise proposal that follows.

The known objective of opponents to the treaties in the Senate was none other than to undermine the stipulations which recognized the rights of the Panamanian people to the interoceanic waterway and the canal area. The congressmen, in turn, for identical objectives introduced in Law 96-70 articles which seek to hinder the application of the treaty, with the aim of preventing or impeding the Republic of Panama from obtaining its legitimate benefits as sovereign of the canal territory. But their attempt was so unwise that it has created serious obstacles to the Canal Commission's ability to administer efficiently and properly the interoceanic waterway. I consider that such an attitude on the part of the U.S. legislators harms the best interests of the United States and the Republic of Panama, and the canal which belongs to it.

In view of the significance of Law 96-70, on which I have had to dwell in the preceding pages, and in the face of the specific issues which this law has created in the execution of the canal treaty, which I have also mentioned, I consider that the Government of the United States must undertake specific efforts to produce a decisive halt to the unwise practices which violate the treaty and which affect their implementation and the friendly relations to which we are bound because of our close connection with the canal. It is not possible that a few months after the implementation of the treaty, forces adverse to the community of interests that we share, are causing disruptions and offensive injustices to prevail—something we believed was a thing of the past.

I call upon your authority as President of the United States and your well-known attitude of understanding toward Panama, so that a halt to this wrongful policy of disregarding Panamanian rights will become the rule of behavior to the execution of the treaty for the purpose of achieving a general reform of Law 96-70 and drafting of new bilateral agreements in those areas warranted.

To be frank, Mr. President, I must state that our nation has not waged from 1904 to 1977 a tenacious struggle, leading to the sacrifice of blood—a date which precisely today we commemorate with devotion—so that the important achievements of the recent treaty will be denied it by Law 96-70; and if such a denial is maintained, the present and future generations, no doubt, will also struggle, as has occurred in the 80 years of this century, to raise the banner of justice to achieve the genuine sovereignty which, notwithstanding the provisions of the Torrijos-Carter treaties, certain U.S. sectors, which have still not understood the significance of respect of the dignity of the Panamanian people, still seek to disregard. With the certainty that you will make the necessary efforts to adequately solve the situations which prompted this note, I cordially greet you, your friend, Aristides Royo, President of the Republic of Panama.●

U.S. House of Representatives
Committee on
Merchant Marine and Fisheries
Room 1334, Longworth House Office Building
Washington, D.C. 20515

January 16, 1980

The Honorable Cyrus R. Vance
Secretary of State

Dear Mr. Secretary:

The Spanish language press in the city of Panama has published the text of a letter dated January 8, 1980 to President Carter from President Royo objecting to certain provisions of the Panama Canal Act of 1979. An unofficial translation of the published text refers to President Royo's earlier letter of July 11, 1979 on the same subject and either elaborates on the points presented in the July letter or raises additional objections to the law or the manner of its application.

Some of the contentions made in the letter as published raise questions of constitutional law in respect to the operation of the Panama Canal Commission as an agency of the United States Government while others lead to even more difficult questions concerning the effect of discrepencies between the English and Spanish texts of the treaty.

The questions raised by the letter are sufficiently serious to warrant close examination by the Committee on Merchant Marine and Fisheries and the Congress as a whole. As a preliminary step in that process the first step is to obtain an authentic text of the letter, an authoritative translation into English and the views of the Department of State in regard to the various points discussed in the letter. Your courtesy in providing the text of the letter and its translation, along with your comments and any recommendations you may have in the premises, will be greatly appreciated.

Sincerely,

JOHN M. MURPHY
Chairman

PANAMA CANAL COMMISSION
APO MIAMI 34011
OFFICE OF THE ADMINISTRATOR

The nine-member Board of Directors of the Panama Canal Commission Wednesday concluded a productive three-day meeting in which, for the first time, U.S. and Panamanian members together assumed responsibility for policy-making and supervision of the affairs of the Panama Canal Commission. The Board focused harmoniously on its responsibilities for the smooth and efficient operation of the Canal while implementing the provisions of the Treaty between the two nations. The Board consists of five U.S. members and four Panamanian members.

Among actions taken by the Board were:

Approval of the regulations which govern the functions and responsibilities of the Board as specified in the Panama Canal Treaty of 1977.

Election of Michael Blumenfeld, Assistant Secretary of the Army (Civil Works), as Chairman of the Board.

Designation of Executive, Budget and Finance, and Personnel Committees as well as a Committee on Long Range Canal improvements.

During the three-day meeting, members were thoroughly briefed on major aspects of Canal operations.

Commission Administrator D. P. McAuliffe briefed the Board on major actions and decisions taken since the Panama Canal Commission was established on October 1, 1979. The Board commended McAuliffe and approved the actions with the understanding that measures pertaining to Canal improvements and major maintenance projects, wage systems, and employee quality of life matters will be reviewed in depth by the proper committees of the Board at a future date to determine whether a revision or modification of such actions is indicated.

Deputy Administrator Fernando Manfredo, Jr., briefed members on the organization and functions of the Canal Commission. Financial and accounting systems were explained by Walter D. Bjorseth, the Commission's top financial executive, and personnel programs were outlined by Personnel Director Ronald L. Seeley.

A special briefing on training and development of Panamanian personnel in preparation for the year 2000, when Panama assumes full responsibility for operation of the waterway, was given by Ricardo R. Varela, newly appointed Associate Director for Human Resources Development.

Chairman of the Board Blumenfeld is also Chairman of the Executive Committee. Other members of the Committee are John A. Bushnell, Deputy Assistant Secretary of State for Inter-American Affairs; Clifford B. O'Hara, Director of Port Commerce, New York and New Jersey Port Authority; Ricardo A. Rodrigues, Panama's Minister of Government and Justice; and Tomas Paredes, Executive Director of Panama's Treaty Affairs Office (DEPAT). Members of the Executive Committee, with the exception of the Chairman, are elected each year by the Board.

Edwin Fabrega V., Director General of Panama's Institute of Hydraulic Resources and Electrification, is Chairman of the Budget and Finance Committee. Members are J. W. Clark, President of Clark Maritime Associates, Inc., New Orleans; O'Hara and Paredes.

The same four Directors will constitute the Committee of Long-Range Canal Improvements. This Committee will suggest its own Chairman.

The Personnel Committee is chaired by Clark. Members are Panamá businessman Roberto M. Heurtematte E.; William Sidell, former General President of the Carpenters and Joiners Union; and Paredes.

At Wednesday morning's session the Board also had preliminary discussions on a proposed Code of Conduct for Commission employees and Board members. The Board decided to defer further consideration until such time as there has been additional discussion between U.S. and Panamanian representatives to clarify the standards of conduct that will conform to the laws of each country and are acceptable to all members of the Board.

The Board appointed Michael Rhode, Jr. as the Secretary of the Panama Canal Commission.

The next meeting of the full Board was set for July 21 and 22 in Panama, with Committee meetings scheduled for July 17-19, also in Panama.

El Matutino, June 12, 1980

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Report on June meeting of Board of Panama Canal Commission by Ricardo Alonso Rodriquez, Minister of Government and Justice Republic of Panama.

In my column of Monday this week, I asked the Panamanian members of the binational board of the Panama Canal Commission, several questions which I consider disturbing as the lack of adequate information on the subject creates a justified uneasiness in public opinion.

In this respect, I have received a letter which I reproduce below with an excerpt of the talk given by the Minister of Government and Justice to the Association of Chinese-Pamananian Professionals. I am referring to the questions I asked. I repeat that in spite of the information that the Minister of Government and Justice is giving me, I will continue asking, and analyzing, because I believe I interpret the feeling of all the Panamanians interested in knowing about the very sensitive area of relations between Panama and the United States.

Herewith, the documents sent by the Minister of Government and Justice:

Panama, June 10, 1980
Mr. Luis Restrepo
El Matutino

Dear Mr. Restrepo:

I am pleased to send you a copy of the talk I gave to the Association of Chinese-Panamanian Professionals.

At that time I spoke on relations between Panama and the United States and, in particular, I gave a brief report on the participation of the Panamanian members of the Board of Directors of the Panama Canal Commission and listed what in our judgment constitute the most important actions taken during those meetings.

This letter is to provide you with information that you could take into consideration in the development of your judgment regarding the problem of the relations between the two countries and at the same time you will be able to judge the performance of the Panamanian members of the organization.

Sincerely yours,

Ricardo Alonso Rodriguez
Minister of Government and Justice

After this introduction it is worthwhile to publish a synthesis of what happened during the meetings of the Board of Directors of the Panama Canal Commission. I believe that the most important actions that I should give to the public at this moment, are the following:

1. The approval of Article 1 of the Board's by-laws, because it reflects the judgment of our country that such organization is not the supervisor but the director of the Panama Canal Commission. The Article reads as follows: Sec. 1.1. Functions. Responsibility for policy making and supervision of the affairs of the Panama Canal Commission is vested in a Board by Article III 3 (s), Panama Canal Treaty of 1977. The Board shall be called the Board of Directors, Panama Canal Commission. The Board shall review and approve for submission to the Congress the annual budget of the Commission to include the capital program for Canal improvements.

2. The election of Arq. Edwin Fabrega as President of the Budget and Finance Commission.

3. The creation of a Committee for the review of the improvement and maintenance of the Panama Canal program.

4. The approval of the statutory regulation that all members of the Board of Directors have the right to have access to all the information available in the Panama Canal Commission, regarding its finance and operations.

5. The unanimous approval of a resolution ratifying the performance of Administrator McAuliffe, with the provision that measures related to salaries, maintenance programs, capital investments, quality of life and budget will be reviewed in depth by the Board itself.

6. All complaints regarding violations of the Torrijos-Carter Treaties by the Panama Canal Commission, were raised.

7. Finally the appointments of the Chief of Finance and the Chief Engineer were deferred and it was decided to wait until the Governments of the United States and Panama reach an agreement on the Code of Conduct for Board members and so that members of the Board can on their own reach an understanding in the near future on the Code of Conduct.

There are more important details and facts, but today I had to give prominence to the above because:

a) That indeed the Board of Directors began its operations with functions that guarantee to the Republic and to the Panamanians an effective participation in the Administration of the Canal.

b) That in spite of the differences of opinion, there is the recognition among the members of the Board of Directors that they should try, as far as it is possible, to reach decisions on the basis of consensus and not on a simple majority.

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NINETY-SIXTH CONGRESS

U.S. House of Representatives
Committee on
Merchant Marine and Fisheries
Room 1334, Longworth House Office Building
Washington, D.C. 20515

June 30, 1980

Honorable Harold Brown
Secretary of Defense
The Pentagon
Washington, D.C. 20301

Dear Mr. Secretary:

On July 28, 1980, under the authority of Rules X and XI of the U.S. House of Representatives, the Subcommittee on the Panama Canal of the Committee on Merchant Marine and Fisheries will commence an investigation into the manner in which the provisions of Public Law 96-70, approved September 27, 1979, have been carried into effect in the organization and operation of the Panama Canal Commission established by Title I of that Act.

At the hearing the Subcommittee will examine generally the extent of the authority conferred by the Act of July 27, 1980, on the Administrator and supervisory Board; the appointment, qualification and powers of the Board under the Act of September 27, 1979, and the role of the Secretary of Defense in the operations of the Commission.

The Subcommittee's inquiry is based primarily on the provisions of the Act of July 27, 1979, particularly section 1101 of the Act establishing the Panama Canal Commission as an agency in the executive branch of the United States Government with respect to which the authority of the President is to be exercised through the Secretary of Defense. The Subcommittee has noted the issuance of Executive Order 12215 of May 27, 1980, delegating certain specific authorities under the Act, July 27, 1979, to the Secretary of Defense, the Secretary of State, and the Director of Office of Personnel Management. No further delegations of authority have been brought to the attention of the Subcommittee.

The Subcommittee is particularly interested in a press report released by the Panama Canal Commission in June of this year stating that "The nine member Board of Directors of the Panama Canal Commission Wednesday concluded a productive three day meeting in which, for the first time, U.S.

and Panamanian members assumed responsibility for policymaking and supervision of the affairs of the Panama Canal Commission" and that "Among actions taken by the Board were: approval of the Regulations which govern the functions and responsibilities of the Board as specified in the Panama Canal Treaty of 1977."

The Subcommittee has been unable to obtain a copy of these regulations from the Commission.

In your written testimony please comment on the conformity to the provisions of the Act of September 27, 1979, in the appointment and qualification of the members of the supervisory Board; the basis for the description of the Board as a "Board of Directors", and the relationship of the Board to the officers of the Commission, the Secretary of Defense (as the representative of the President), and the Executive Branch of the United States Government.

After consideration of your testimony, the testimony of other witnesses, and other relevant data, the Subcommittee will consider the necessity and desirability of enactment of further legislation on the subject in addition to the pending authorization and appropriation bills for the agency.

Fifty copies of your prepared testimony should be received by the Subcommittee not later than July 24, 1980. Please bring an additional 25 copies to the hearing.

With best wishes for you, I am

Sincerely yours,

CARROLL HUBBARD
Chairman
Panama Canal Subcommittee

CH:WMW:mpb

Public Law 96-70,
September 27, 1980,
93 Stat. 456.

TITLE I—ADMINISTRATION AND REGULATIONS

CHAPTER 1—PANAMA CANAL COMMISSION

ESTABLISHMENT OF COMMISSION

22 USC 3611.

SEC. 1101. There is established in the executive branch of the United States Government an agency to be known as the Panama Canal Commission (hereinafter in this Act referred to as the "Commission"). The Commission shall, under the general supervision of the Board established by section 1102 of this Act, be responsible for the maintenance and operation of the Panama Canal and the facilities and appurtenances related thereto. The authority of the President with respect to the Commission shall be exercised through the Secretary of Defense.

SUPERVISORY BOARD

Membership. 22 USC 3612.

SEC. 1102. (a) The Commission shall be supervised by a Board composed of nine members, one of whom shall be the Secretary of Defense or an officer of the Department of Defense designated by the Secretary. Not less than five members of the Board shall be nationals of the United States and the remaining members shall be nationals of the Republic of Panama. At least one of the members of the Board who are nationals of the United States shall be experienced and knowledgeable in the management or operation of an American-flag steamship line which has or had ships regularly transiting the Panama Canal, at least one other such member shall be experienced and knowledgeable in United States port operations or in the business of exporting or importing one of the regular commodities dependent on the Panama Canal as a transportation route, and at least one other such member shall be experienced and knowledgeable in labor matters in the United States. Three members of the Board shall hold no other office in or be employed by the Government of the section. The code of conduct shall contain provisions substantially equivalent to those contained in part 735 of title 5 of the Code of Federal Regulations on the effective date of this Act. The code of conduct shall, at a minimum, contain provisions substantially equivalent to the following provisions of law:

18 USC 201 et seq. (1) the provisions of chapter 11 of title 18, United States Code, as amended, relating to bribery, graft, or conflicts of interest, as appropriate to the employees concerned;

(2) section 7352 of title 5, United States Code, as amended;

(3) sections 207, 208, 285, 508, 641, 645, 1001, 1917, and 2071 of title 18, United States Code, as amended;

(4) section 5 of the Act of July 16, 1914 (31 U.S.C. 638a), as amended;

2 USC 701. (5) the Ethics in Government Act of 1978 (92 Stat. 1824), as amended; and

(6) those provisions of the laws and regulations of the Republic of Panama which are substantially equivalent to those of the United States set forth in this subsection.

Investigation. (c) The Commission shall investigate any allegations regarding the violation of the code of conduct adopted pursuant to subsection (b) of this section. The Commission may recommend that the President suspend from the performance of his duties any member of the Board of the Commission or any officer or employee of the Commission, pending judicial proceedings by appropriate authorities concerning such allegations.

Negotiations. (d) The President shall negotiate suitable arrangements with the Republic of Panama whereby each nation shall agree to take all measures within its legal authority to assure that members of the Board of the Commission comply with the code of conduct established pursuant to subsection (b) of this section. Without prejudice to such jurisdiction as the United States may have with respect to members of the Board, the provisions of law enumerated in subsection (b) of this section shall be enforced with respect to members of the Board only in accordance with such arrangements.

OFFICE OF OMBUDSMAN

Establishment. 22 USC 3623. SEC. 1113. (a) There is established within the Commission an Office of Ombudsman, to be directed by an Ombudsman, who shall be appointed by the Commission. It shall be the function of the Office of Ombudsman to receive individual complaints, grievances, requests, and suggestions of employees (and their dependents) of the Commission and other departments and agencies of the United States, including the Smithsonian Institution, conducting operations before the effective date of this Act in the area then comprising the Canal Zone concerning administrative problems, inefficiencies, and conflicts caused within departments and agencies of the United States, including the Smithsonian Institution, as a result of the implementation of the Panama Canal Treaty of 1977 and related agreements.

Functions. (b) The Ombudsman shall make findings and render assistance with respect to the complaints, grievances, requests, and suggestions submitted to the Office of Ombudsman, and shall make appropriate recommendations to the Commission or any other department or agency of the United States, including the Smithsonian Institution.

(c) The establishment of the Office of Ombudsman shall not affect any procedures for grievances, appeals, or administrative matters in any other provision of this Act, any other provision of law, or any Federal regulation.

(d) The Ombudsman shall be a citizen of the United States.

(e) The Office of Ombudsman shall terminate upon the termination of the Panama Canal Treaty of 1977. Terminati

JOINT SEA LEVEL CANAL STUDY COMMITTEE

22 USC 3619.

SEC. 1109. (a) The President shall appoint the representatives of the United States to any joint committee or body with the Republic of Panama to study the possibility of a sea level canal in the Republic of Panama pursuant to Article XII of the Panama Canal Treaty of 1977.

Transmittal to President of the Senate and House of Representatives.

(b) Upon the completion of any joint study between the United States and the Republic of Panama concerning the feasibility of a sea level canal in the Republic of Panama pursuant to paragraph 1 of Article XII of the Panama Canal Treaty of 1977, the text of the study shall be transmitted by the President to the President of the Senate and to the Speaker of the House of Representatives.

(c) No construction of a sea level canal by the United States in the Republic of Panama shall be undertaken except with express congressional authorization after submission of the study by the President as provided in subsection (b) of this section.

AUTHORITY OF THE AMBASSADOR

Coordination of transfer of functions.
22 USC 3620.

SEC. 1110. (a) The United States Ambassador to the Republic of Panama shall have full responsibility for the coordination of the transfer to the Republic of Panama of those functions that are to be assumed by the Republic of Panama pursuant to the Panama Canal Treaty of 1977 and related agreements.

(b)(1) The Commission shall not be subject to the direction or supervision of the United States Chief of Mission in the Republic of Panama with respect to the responsibilities of the Commission for the operation, management, or maintenance of the Panama Canal, as established in this or any other Act or in the Panama Canal Treaty of 1977 and related agreements, except that the Commission shall keep the Ambassador fully and currently informed with respect to all activities and operations of the Commission.

(2) Except as provided in paragraph (1) of this subsection, section 16 of the Act of August 1, 1956 (22 U.S.C. 2680a), shall apply with respect to the activities of the Commission.

SECURITY LEGISLATION

22 USC 3621.

SEC. 1111. It is the sense of the Congress that the best interests of the United States require that the President enter into negotiations with the Republic of Panama for the purpose of arranging for the stationing of United States military forces, after the termination of the Panama Canal Treaty of 1977, in the area comprising the Canal Zone before the effective date of this Act, and for the maintenance of installations and facilities, after the termination of such Treaty, for the use of United States military forces stationed in such area. The President shall report to the Congress in a timely manner the status of negotiations conducted pursuant to this section.

Report to Congress.

CODE OF CONDUCT FOR COMMISSION PERSONNEL

Oath of office.
22 USC 3622.

SEC. 1112. (a) Before assuming the duties of his office or employment, each member of the Board of the Commission and each officer and employee of the Commission shall take an oath to discharge faithfully the duties of his office or employment. All employees of the Commission shall be subject to the laws of the United States regarding duties and responsibilities of Federal employees.

(b) Not later than 60 days after all the members of the Board of the Commission have been appointed, the Board shall adopt a code of conduct applicable to the persons referred to in subsection (a) of this

United States. Members of the Board who are nationals of the United States shall cast their votes as directed by the Secretary of Defense or his designee.

(b) The President shall appoint the members of the Board. The members of the Board who are United States nationals shall be appointed by and with the advice and consent of the Senate. Each member of the Board shall hold office at the pleasure of the President and, before assuming the duties of such office, shall take an oath to discharge faithfully the duties of his office. Members of the Board shall serve without compensation but shall be allowed travel or transportation expenses, including per diem in lieu of subsistence, in accordance with section 1107 of this Act. Compensation, travel expenses.

(c) The Board shall hold meetings as provided in regulations adopted by the Commission and approved by the Secretary of Defense. A quorum for the transaction of business shall consist of a majority of the Board members of which a majority of those present are nationals of the United States. Quorum.

ADMINISTRATOR

SEC. 1103. There shall be an Administrator of the Commission, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold office at the pleasure of the President. 22 USC 1113.

DEPUTY ADMINISTRATOR AND CHIEF ENGINEER

SEC. 1104. (a) There shall be a Deputy Administrator and a Chief Engineer of the Commission, both of whom shall be appointed by the President. The Deputy Administrator and the Chief Engineer shall perform such duties as may be prescribed by the President. 22 USC 1114.

(b) The Deputy Administrator and the Chief Engineer shall each be paid compensation at a rate of pay established by the President which does not exceed the rate of basic pay in effect for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code. 3 CFR 1978 Comp., p. 236.

CONSULTATIVE COMMITTEE

SEC. 1105. (a) The President shall designate, and the Secretary of State shall coordinate the participation of, representatives of the United States to the Consultative Committee to be established under paragraph 7 of Article III of the Panama Canal Treaty of 1977. 22 USC 3615.

(b) The Consultative Committee shall function as a diplomatic forum for the exchange of views between the United States and the Republic of Panama. The Committee shall advise the United States Government and the Government of the Republic of Panama on matters of policy affecting the operation of the Panama Canal. The Committee shall have no authority to direct the Commission or any other department or agency of the United States to initiate or withhold action.

JOINT COMMISSION ON THE ENVIRONMENT

SEC. 1106. (a) The United States and the Republic of Panama, in accordance with the Panama Canal Treaty of 1977, shall establish a Joint Commission on the Environment (hereinafter in this section referred to as the "Joint Commission") to be composed of not more than three representatives of the United States and three representatives of the Republic of Panama, or such other equivalent numbers of Membership. 22 USC 3616.

representatives as may be agreed upon by the Governments of the two countries. The United States members of the Joint Commission shall periodically review the implementation of the Panama Canal Treaty of 1977 with respect to its impact on the environment and shall, jointly with the representatives of the Government of Panama, make recommendations to the United States Government and the Government of the Republic of Panama with respect to ways to avoid or mitigate adverse environmental impacts resulting from actions taken pursuant to such Treaty.

Compensation, travel expenses.

(b) Representatives of the United States on the Joint Commission shall be appointed by the President and shall serve at the pleasure of the President. Such representatives shall serve without compensation but shall be allowed travel or transportation expenses, including per diem in lieu of subsistence, in accordance with section 1107 of this Act.

(c) Any Federal employee subject to the civil service laws and regulations who is detailed to serve with, or appointed by, the United States representatives on the Joint Commission shall not lose any pay, seniority, or other rights or benefits by reason of such detail or appointment.

Compensation.

(d) The United States representatives on the Joint Commission may, to such extent or in such amounts as are provided in advance in appropriation Acts, appoint and fix the compensation of such personnel as the representatives of the United States on the Joint Commission may consider necessary for the participation of the United States on the Joint Commission.

Rules of procedure.

(e) The United States representatives on the Joint Commission may, in cooperation with the representatives of the Republic of Panama on the Joint Commission, establish rules of procedure to be used by the Joint Commission in conducting its affairs, subject to the approval of such rules by the Governments of the United States and the Republic of Panama.

TRAVEL EXPENSES

22 USC 3617.

SEC. 1107. While away from their homes, regular places of business, or official stations in performance of services under this chapter, members of the Board of the Commission and the representatives of the United States on the Consultative Committee referred to in section 1105 of this Act and on the Joint Commission on the Environment referred to in section 1106 of this Act shall be allowed travel or transportation expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5, United States Code.

DEFENSE OF THE PANAMA CANAL

22 USC 3618.

SEC. 1108. In the event of an armed attack against the Panama Canal, or when, in the opinion of the President, conditions exist which threaten the security of the Canal, the Administrator of the Commission shall, upon the order of the President, comply with such directives as the United States military officer charged with the protection and defense of the Panama Canal may consider necessary in the exercise of his duties.

CANAL COMMISSION MEMBERS COMMENT ON ISSUES

PA241801 Panama City Circuito RPC Television in Spanish 2300 GMT 23 Jul 80

[Statements by Ricardo Rodriguez, Edwin Fabrega and Tomas Paredes, Panamanian members of the Panama Canal Commission, reported by news director Fernando Eleta Casanova at Panamanian presidency; date not specified--passages in quotation marks recorded]

[Text] [Eleta Casanova] Many important points were discussed during the ordinary session of the Panama Canal Commission Board of Directors. One of these was the code of ethics to be applied to all the Panamanian and U.S. personnel involved in the operation of the canal. Government and Justice Minister Ricardo Rodriguez, a member of the Board of Directors, has explained the Panamanian position in this regard.

[Rodriguez] "During the first session, we, as Panamanian Government representatives, opposed the adoption of the code of ethics and we emphatically stated that as representatives of Panama on the Board of Directors, we could not be subject to norms issued by an organ that belongs to the structure of another government. We said that as government representatives we could not be subject to the common disciplinary rules governing employees of an ordinary institution. That is the position we adopted in the first session of the Board of Directors of the Panama Canal Commission. As a result of that debate, the issue was postponed.

"On this occasion, the U.S. delegation once again presented a draft code of conduct but different from the initial draft. In the first draft, all the employees and members of the Board of Directors, regardless of their nationality, were subject to the code of conduct and to U.S. legislation. In the new draft, even though norms of the code of ethics are adopted, this is done in two parts: one for the U.S. employees and members of the Board of Directors and another for the Panamanian members of the Board of Directors. So the code is divided into two parts: one for all the employees and another for the members of the Board of Directors. Regarding the members of the Board of Directors, it explicitly states that the Panamanian members of the board are not subject to U.S. legislation but to Panamanian legislation dealing with ethics. In other words, they expressly state that we are not subject to any U.S. legislation.

"Our opposition to the code of ethics is due to certain very delicate norms which permit very accommodating [acomodadas] interpretations. It is also a result of formal aspects; namely, as government representatives we cannot be subject to such norms. This is not necessarily due to the ethical content of the famous code of ethics because if we look at its content, in general I would say that 99 percent of its norms are correct and respond to the desire to achieve correct moral behavior from all the members of the Board of Directors and the employees of the Canal Zone. However, as representatives of a government and the fact that, in the end, the code is the product of an organ that is an agency of a foreign government does not permit us to be subject to those rules. We categorically stated this. We said that despite the fact that the code of ethics was approved by five to four, the Republic of Panama did not accept that code of ethics and did not feel it was subject to those norms. However, we said that through the other channels established by the treaties such as the consultative committee and at the embassy level, we would continue to debate the problem so that the U.S. Government will issue the necessary measures so that this part of the code referring to the Panamanian members of the Board of Directors will be abolished or abrogated."

[Eleta Casanova] Minister Rodriguez also spoke on the draft of the delimitation of functions between the canal administrator and the Board of Directors which was presented by the North Americans.

[Rodriguez] "In general the draft expresses the Panamanian position that the Board of Directors is the body that really directs the entity called the Canal Commission. This is the objective of the draft of the resolution since it gives maximum authority to the Board of Directors and points out the important functions of the Board of Directors such as approving the budget, assigning functions to the administrator, deputy administrator chief of engineers and other important officials of the Canal Commission, and approving the labor policy and the employment and wage systems. In sum, all the most important functions remain in the hands of the Board of Directors.

"However, we opposed it because we believed that the draft could be improved. In other words, the authority granted to the administrator must be consistent with the new circumstances which are the result of the Torrijos-Carter treaties. The draft of the resolution specifically lists six or seven functions that the Board of Directors reserves for itself. Another paragraph then states that all those functions which have not been assigned to the Board of Directors are left in the hands of the administrator, for example, the conclusion and approval of contracts, the establishment of regulations for the functioning of the boards of inspectors which deal with the claims over canal transit accidents which is a very important function, and the settlement of claims. All these functions would be left in the hands of the administrator who would use his own discretionary power even though the same resolution establishes that the Board of Directors maintains the power to review the administration's actions.

"We believe that, given the new circumstances, it is logical and normal that the specific functions of the Board of Directors be expressed, that the resolution state that those functions not assigned to the administrator are in the hands of the Board of Directors and that the functions of the administrator be also defined. Regarding the power to sign contracts and undertake transactions and so forth, limits and categories should be established to reflect a new way of administering the canal in accordance with the Torrijos-Carter treaties. That is, the resolution should indicate what contracts must be previously approved or authorized by the Board of Directors, what contracts can be approved afterward by the Board of Directors and what contracts can be concluded by the Canal Zone administrator in accordance with his own judgment.

"We also pointed out that all the regulating functions, those of issuing general regulations for the functioning of the Canal Commission, must exclusively be in the hands of the Board of Directors.

"These observations, which are not all of the ones we made, reflect our concern that this new resolution, which leans in the direction that the republic and its spokesman, the president of the republic, have pointed out, to the effect that the Board of Directors should be a real Board of Directors because this is established in the text of the treaties, is generally positive. However, these deficiencies must be corrected. These observations, I repeat, were favorably received by the U.S. delegates and discussion of the subject was postponed until the next Board of Directors meeting which will be held in New Orleans in October.

"I believe our observation about establishing certain limitations on the power of the administrator has been viewed positively by the U.S. delegation and I think that in the next session we will have a draft which will be more consistent with the viewpoints of the two delegations. I think there is a consensus or at least a substantial improvement in the draft."

[Eleta Casanova] Thank you, minister, Edwin Fabrega, a member of the board, will explain his new duties. He is not chief of maintenance of the canal. Instead he has been elected chairman of the Canal Planning and Improvement Commission.

[Fabrega] "In truth, our function is to follow closely the work of the Canal Commission Planning Group, to encourage their studies and then to advise them so studies will be made which will guarantee that in the year 2000 Panama will receive a canal in better conditions than those which exist now and in perfect condition to handle the traffic foreseen for that time."

[Eleta Casanova] We asked Fabrega about the plans to achieve those objectives.

[Fabrega] "There are very specific plans. For example, the increase in the number of mules means that less time is lost in getting the ships in the locks and that the transit will be faster. The deepening of the canal means there will always be a proper depth for the ships and that we will not have to impose the cargo reductions that sometimes are established because of lack of depth. This will also permit an increase in the number of transits that ships can make in a year. Those studies also include ones on special illumination and on internal navigation controls to permit big ships to transit at night. That area is frequently foggy, which makes night navigation impossible.

"All those projects, which are very costly, would guarantee more efficiency in the canal. We are talking of investments of no less than $40-$50 million a year. In the budget that has just been approved for 1982 we have noted that only $27 million has been allocated for this. We feel it is not enough, even though the $27 million is well allocated, directed at solving the main problems, which are the traffic bottlenecks. We think policy in this area must be more aggressive.

"They [not further identified] also recognize that there are limits imposed by the implementation law which governs them. It establishes that the canal expenditures must come strictly from its revenues. This imposes limitations because the enterprise is limited in asking for loans and in making investments now when it is cheaper, rather than when it will have money available after years of collecting tolls."

[Eleta Casanova] Fabrega explained the budget approved by the Board of Directors for the next fiscal year for the operation of the canal.

[Fabrega] "The budget that was approved amounts to approximately $430 million, 75 percent of which comes from toll revenues. The other 25 percent is from revenues from other Canal Commission services such as payments for the electric energy supplied to the armed forces, the tow services for the ships which dock in the ports or additional tugboat service for ships which cannot transist the canal by themselves. These amount to $430 million a year of that budget. There is an estimated amount of payments to Panama based on the tonnage that transits the canal, the set $10 million paid to Panama and the $10 million paid to Panama for the services it provides to the canal area. It is estimated that $75 million of that budget will go to Panama.

"That budget includes $27-$28 million for investments. This includes the purchase of new tugboats and mules. These are part of the improvement programs which, as I indicated before, are the ones we are interested in as members of that commission, to make sure that the canal will have adequate capacity to handle traffic on the day we receive it in the year 2000."

[Eleta Casanova] Fabrega also said that although Panama approved the budget, its representatives made the observation that they did not agree with the payment of $17 million for interest on the cost of construction of the canal since our country considers that this has been fully paid. Fabrega also said it was established that the budget would be flexible so changes will be considered when the wages between the old and new workers are leveled.

Tomas Paredes will speak about the labor aspects.

[Paredes] "Panama had the opportunity to present at the Board of Directors its position regarding various labor aspects. In the first place, Panama presented its position regarding payment of the second part of the 13th month bonus by the Panama Canal Commission. It indicated that this is the obligation of the employer and at no time can it be transferred to the worker. Second, Panama presented its position on the immediate elimination of the pay scales that went into effect on 1 October for the new workers of the Panama Canal Commission since these introduce discriminatory aspects. It has led to cases in which two people who do the same work receive different wages.

"In the third place, Panama presented a proposal for wage adjustment for the Panamanians who are Panama Canal Commission employees and who live in the canal area due to the decrease in their purchasing power as a result of the increase in the cost of living since they do not have access to housing, food, gasoline and public services which are subsidized, as was the case with the Panama Canal Company.

"In other labor aspects, Panama vigorously protested the application of some temporary measures that the Canal Commission has adopted through its administrator with regard to the preferential hiring of Panamanians by the Canal Commission, the rotation of North Americans in that agency and the hiring of citizens of third countries outside Panama.

"Panama maintained a firm position regarding fulfillment of the provisions of the 1977 Panama Canal Treaty. Special stress was made in these discussions on labor aspects regarding the application of title 7 which regulates the labor-management relations in the canal area. Title 7 is essentially based on U.S. law and therefore its application flagrantly violates the Panama Canal Treaty.

"The last subject to be discussed in labor affairs was that of the ombudsman. Panama has said that this position in the commission is discriminatory because it is established that it must be filled by a U.S. citizen. We also said that in the application or implementation of that ombudsman position much care has to be taken so that the person in that post will not apply or interpret the provisions established in the Panama Canal Treaty."

[Eleta Casanova] What were the results of these complaints? Was agreement reached or did the United States obtain approval by five to our votes?

[Paredes] "No vote has taken place. On the contrary, most of the Panamanian complaints are the object of serious studies and analyses by the U.S. members of the Board of Directors. For its part Panama has been drafting and improving all these proposals and their economic, social and political effects. I think that in a third meeting of the Board of Directors which will be held in October, final decisions on these subjects will be made."

[Eleta Casanova] Even though there are differences between Panamanian and U.S. representatives, the sole agreement to postpone decisions until consensus is reached seems to indicate that the implementation of the treaties is functioning.

From the presidency of the republic, this is Fernando Eleta Casanova.

MATUTINO CRITICIZES U.S. INTERPRETATION OF CANAL TREATY

PA021342 Panama City MATUTINO in Spanish 1 Aug 80 pp 4-a, 8-a

[Article by Luis Restrepo Rosas: "Interpretations"]

[Text] Worried about what is occurring as a result of the U.S. colonialist interpretation of the Torrijos-Carter treaties on the Panama Canal, and also about the passive attitude of the Panamanian Government toward that interpretation, I approached a Panamanian patriot who has studied this issue. Because he knows many sides of the problem well, I asked him to make a legal interpretation of the conflicts that I have been commenting on in this column, always serving first and foremost the interests of the country and of urban and rural workers.

We talked for a long time and I received some very objective guidance which will come in handy in the future in the struggle for a fair U.S. interpretation of the treaty which will apparently eliminate the points of conflict between the two nations. My friend told me that that is a capricious interpretation based primarily on Law 96-70, which was approved by the U.S. Congress. That law has totally twisted the bases of the canal treaty. Here is the legal interpretation he made:

The conflicts around the behavior code, the authority of the President of the United States and the U.S. secretaries of defense and army to guide the Panama Canal Commission, the requirement for Panamanians on the board of directors and the Panamanian deputy administrator to take an oath, the application of Title 35 of the Code on Federal Regulations, sections of the Canal Zone Code and the Civil Service Law, and all the other jurisdictional problems that we have been facing since 1 October 1979 are the result of the enforcement of Law 96-70 which was enacted by the U.S. Congress and which totally distorts the Torrijos-Carter treaty.

Panama and the United States agreed in the treaty that during the transition period, before completely relinquishing the administration of the Panama Canal, a binational body led by a board of directors would manage, operate and maintain the canal.

That binational body (international because it includes two countries and was created through a treaty) would follow the provisions of the treaty, as well as Panamanian laws, except those that might be contrary to it.

Article 9 of the treaty is very clear when it says that "in keeping with the provisions of the treaty and its annexes, the laws of the Republic of Panama will be applied in the areas placed at the disposal of the United States pursuant to the treaty."

For greater protection, U.S. negotiators made item eight in that same Article 9 read; "The Republic of Panama will not enact, pass or implement any law, decree, regulation or international agreement or take any action intended to regulate or in some way interfere with the exercise of the rights of the United States of America conferred by this treaty or its annexes."

The sole legislative act that the United States could pass was the law creating the Panama Canal Commission.

However, Congress took advantage of this to try to distort the treaty.

Law 96-70 goes far beyond the creation of a body and openly violates the treaty by turning the body into an agency subordinate to the President of the United States. It takes away the powers of the board of directors and gives them to the President of the United States, who in turn can delegate them to the secretary of defense; it restrains the use of funds for administrative purposes; it creates executive positions; it pinpoints guidelines on labor, employment, wages, accounting and auditing, tolls, ship accidents, sales, navigation rules, ship inspections, police and legal procedures.

As long as that law remains in effect we will continue to live in day-to-day confrontation, because Panama has a completely different idea about the legal status of the Panama Canal Commission, the role of the Panamanians on the board of directors, the deputy administrator and the Panamanians on the canal administration later, on the applicable legislation, and autonomy from the U.S. President and the Congress.

The U.S. officials on the board of directors and in the administration, as well as the secretary of the army, have apologized saying that they simply have to comply with Law 96-70.

Therefore, the Panamanian Government should formally denounce the United States in international organizations for violating the Torrijos-Carter treaty. That law completely thwarts the objectives of the treaty as well as the elimination of the causes of conflict. On the contrary, it intensifies them.

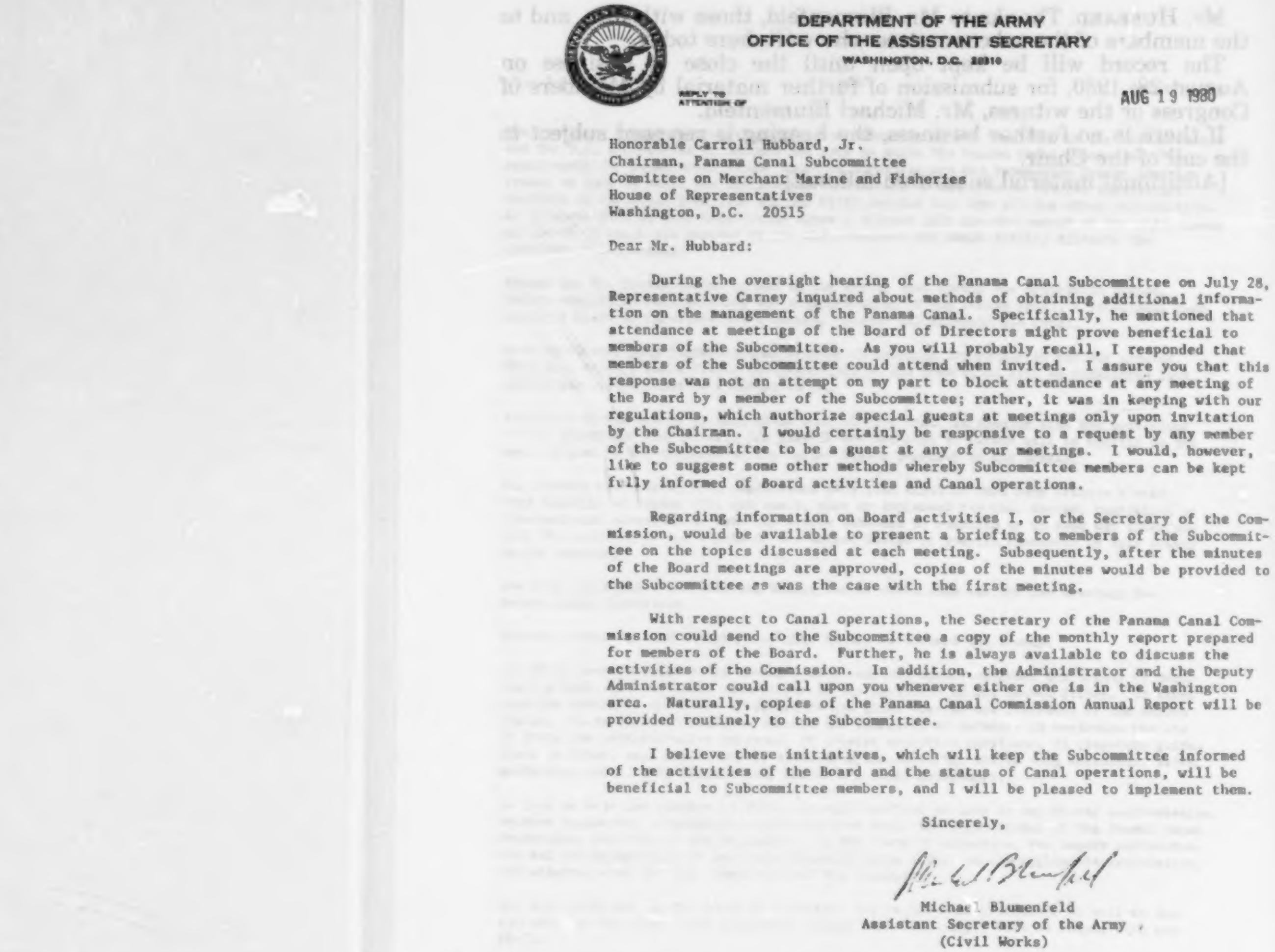
Panamanian Foreign Minister Dr Carlos Ozores owes us an explanation because President Carter's recommendation to discuss this matter in the consultative committee is unacceptable. It is a trap and a waste of time.

Mr. Hubbard. Thanks to Mr. Blumenfeld, those with him, and to the members of the subcommittee who were here today.

The record will be kept open until the close of business on August 28, 1980, for submission of further material by Members of Congress or the witness, Mr. Michael Blumenfeld.

If there is no further business, the hearing is recessed subject to the call of the Chair.

[Additional material submitted follows:]



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20310

REPLY TO
ATTENTION OF

AUG 19 1980

Honorable Carroll Hubbard, Jr.
Chairman, Panama Canal Subcommittee
Committee on Merchant Marine and Fisheries
House of Representatives
Washington, D.C. 20515

Dear Mr. Hubbard:

During the oversight hearing of the Panama Canal Subcommittee on July 28, Representative Carney inquired about methods of obtaining additional information on the management of the Panama Canal. Specifically, he mentioned that attendance at meetings of the Board of Directors might prove beneficial to members of the Subcommittee. As you will probably recall, I responded that members of the Subcommittee could attend when invited. I assure you that this response was not an attempt on my part to block attendance at any meeting of the Board by a member of the Subcommittee; rather, it was in keeping with our regulations, which authorize special guests at meetings only upon invitation by the Chairman. I would certainly be responsive to a request by any member of the Subcommittee to be a guest at any of our meetings. I would, however, like to suggest some other methods whereby Subcommittee members can be kept fully informed of Board activities and Canal operations.

Regarding information on Board activities I, or the Secretary of the Commission, would be available to present a briefing to members of the Subcommittee on the topics discussed at each meeting. Subsequently, after the minutes of the Board meetings are approved, copies of the minutes would be provided to the Subcommittee as was the case with the first meeting.

With respect to Canal operations, the Secretary of the Panama Canal Commission could send to the Subcommittee a copy of the monthly report prepared for members of the Board. Further, he is always available to discuss the activities of the Commission. In addition, the Administrator and the Deputy Administrator could call upon you whenever either one is in the Washington area. Naturally, copies of the Panama Canal Commission Annual Report will be provided routinely to the Subcommittee.

I believe these initiatives, which will keep the Subcommittee informed of the activities of the Board and the status of Canal operations, will be beneficial to Subcommittee members, and I will be pleased to implement them.

Sincerely,

Michael Blumenfeld

Michael Blumenfeld
Assistant Secretary of the Army
(Civil Works)

[Whereupon, at 12 m., the subcommittee was adjourned, subject to the call of the Chair.]

PANAMA CANAL ENVIRONMENTAL ISSUES OVERSIGHT

MONDAY, MARCH 17, 1980

House of Representatives,
Subcommittee on the Panama Canal,
Committee on Merchant Marine and Fisheries,
Washington, D.C.

The subcommittee met at 10:18 a.m., in room 1334, Longworth House Office Building, Hon. Carroll Hubbard, chairman, presiding.

Present: Representatives Hubbard, Bauman, and Livingston.

Staff present: Merrill Whitman, Terrence Modglin, Luis Luna, Michael Smith, and Mary Pat Barrett.

Mr. **Hubbard**. To each of you who visits with us today, I extend my greetings as the chairman of the Panama Canal Subcommittee.

Since we are holding a hearing on the Monday morning, many Members are still out of town, especially on a Monday when it is announced, that we will not, in fact, have any rollcall votes. But the Speaker of the House, Tip O'Neill; the majority leader of the House, Jim Wright; and the minority leader of the House, John Rhodes, have all encouraged committee members to hold hearings on Monday, and to try to complete hearings, if possible, on Monday, so that we can have these out of the way and behind us, and so that they do not interrupt and conflict with meetings of the House of Representatives when the House is indeed in session. Oftentimes, committees do meet on Wednesday, with the House not going into session until 3 p.m., or, as last week, 1 p.m.

Therefore, I have seen on my own schedule, I have three subcommittee meetings and a full committee meeting, all in markup at the same time. It is impossible for me to attend but one of them, of course, and I have to leave proxies with the others.

So having heard the request of the Speaker and the majority leader and the minority leader, and others, as to having hearings, when possible, on an open day, to encourage the Members not to be out of town on both Monday and Friday, we are holding this hearing today. Friday we did not meet. However, I went ahead and scheduled this subcommittee hearing for today, and I can begin the meeting, as we are doing now, and I will read my opening statement.

Today marks the first opportunity, now that the Panama Canal Treaty has entered into force, for this subcommittee to examine in full the environmental factors affecting the viable operation of the Panama Canal and the quality of life of those who live in the canal area.

The purpose of this hearing is to bring the subcommittee members up to date on the status of the environment of the Panama

Canal and to point out some of the consequences of the failure to properly maintain environmental balance in the canal area.

Environmental protection of the Panama Canal area has been a concern of this subcommittee in the past, and will remain a long-term concern because it is inextricably related to the smooth and continual canal operation in future years.

We are aware that in the long run environmental protection of the canal watershed will depend on the will of the Government and Republic of Panama. But the United States is also responsible, along with the Republic of Panama, until the year 2000, to implement the Panama Canal Treaty in a manner which would avoid any adverse environmental impacts in the canal area.

The Panama Canal Treaty and the Panama Canal Act provide the framework of institutions, and a list of tasks, for the canal's environmental protection in the next 20 years.

The Joint Commission on the Environment is the primary institutional vehicle envisioned in the Panama Canal Treaty of 1977 to provide for close overview of any environmental problem that could arise as a result of the implementation of the treaty. This Commission is composed of three representatives of the United States, one of whom will be testifying today, and three representatives of the Republic of Panama. For the substantive participation of the United States in the work of the Joint Commission, section 1106 of the Panama Canal Act provides for appointment of U.S. Commissioners, the appointment and compensation of staff, and the establishment of rules of procedure.

While the Joint Commission on the Environment is the primary institution for environmental protection referenced in the treaty, it is clear that relevant U.S. agencies must also have full commitment to environmental concerns if there is to be a successful implementation of the treaty without environmental damage.

The Panama Canal Commission, for example, is most directly concerned with the water supply of the canal, coordination with Panama of public services provided in the canal area, and maintenance of existing equipment and facilities for the direct operation of the canal and for the support of employees, all of which have considerable interrelation with the environment.

Moreover, the Agency for International Development has undertaken to work with the Government of Panama in a major effort to reforest the canal's watershed.

Finally, the Smithsonian Tropical Research Institute provides a formidable source of scientific and environmentalist expertise to deal with environmental problems that do arise in the canal area. Because of the role of these agencies, then, we have asked for their testimony today. We have asked the agencies to comment upon present and prospective environmental problems, and their proposed solutions.

In addition to addressing the topic in general, our witnesses have also been invited to make any comments they might desire concerning the Office of Technology Assessment working paper dated December 15, 1978. That paper was a landmark piece of work because of the experts whose opinion were included in it. We hope to build on the study in the future.

Environmental concerns need to be represented at all stages of the implementation of the treaty to prevent any adverse action which could endanger the canal operation. A determination to deal with these concerns needs to be reflected from the very beginning of the application of the Panama Canal Act, and that is why this subcommittee is holding today's hearings.

In the context of our hopes for the future successful operation of the canal, and in the light of a forward-looking policy for development of all resources to attain that objective, we now anticipate the statements of Dr. Ira Rubinoff, Director of the Smithsonian Tropical Research Institute in Panama; Mr. Thomas Constant, Secretary of the Panama Canal Commission; Mr. Aldelmo Ruiz, Director of the Agency for International Development Mission in Panama; and Hon. William Austin Hayne, Deputy Assistant Secretary of State for Environmental Health and Natural Resources, and also a U.S. representative on the Joint Commission on the Environment.

At this time I would like to note that our newest member of the subcommittee Congressman Robert Livingston, is with us. We welcome you to the subcommittee, Congressman Livingston.

Mr. LIVINGSTON. Thank you, Mr. Chairman.

It is a pleasure to be here.

This is my first opportunity to serve on the subcommittee and I look forward to the hearings.

Mr. HUBBARD. It is true that former Congressman Treen, now in his second week as Governor, he did resign as a Member of Congress.

Mr. LIVINGSTON. He did resign and I am taking his position.

Mr. HUBBARD. At this time, the Chair asks unanimous consent to enter into the record documents relating to the hearing today.

These documents consist of the St. Louis Globe-Democrat article entitled "Is the Panama Canal Doomed?", and selected portions of the Agency for International Development paper on the watershed management project; the Office of Technology Assessment paper on environmental factors related to the canal, to which there will be many references this morning, was included in our previous printed hearings on Canal Operations Under the 1977 Treaty, Parts 1 and 2.

Mr. HUBBARD. Our first witness today before our subcommittee is Dr. Ira Rubinoff, Director of the Smithsonian Tropical Research Institute.

Dr. Rubinoff has appeared before our subcommittee many times in the past to testify on the operations of the Institute and its subordinate entity, the Canal Zone Biological Area. Members will recall that earlier in this Congress, pursuant to its authorizing role, the subcommittee promoted legislation to raise the limit on authorized funds for this biological area to $750,000 per year. The legislation was signed into law as Public Law 96-89 on October 19, 1979.

Our witness has been Director of the Tropical Research Institute, known as STRI, for many years, and he has had considerable contact with his Panamanian scientific counterparts.

His role and background should enable him and the organization he heads to contribute significantly to present and future environmental problems.

Dr. Rubinoff, your testimony today gives us an opportunity to brief the subcommittee on the latest activities in the biological area. But we hope you will give special emphasis to what, and should, arise respecting the canal in the years ahead.

Again, Dr. Rubinoff, the Director of the Smithsonian Tropical Research Institute of the Smithsonian Institution. We welcome you and your remarks.

STATEMENT OF DR. IRA RUBINOFF, DIRECTOR, SMITHSONIAN TROPICAL RESEARCH INSTITUTE

Dr. RUBINOFF. Thank you, Mr. Chairman.

I appreciate the opportunity, on behalf of the Smithsonian Tropical Research Institute, a Bureau of the Smithsonian Institution, to appear before you today to discuss environmental issues related to the Panama Canal.

The lakes of the Panama Canal provide water for ship transits and for the cities of Colon and Panama. Thus, protection of the canal watershed against deforestation is of primary concern to Panama and to other countries that contemplate using the canal. The 326,300 hectare watershed is already 80 percent deforested, chiefly in areas that do not directly abut the canal. It has been calculated that soil erosion will increase between 50 cubic meters per hectare per year and 260 cubic meters per hectare per year on deforested areas. Soil passing into the canal waters can present major problems. At the moment it costs $1.31 to remove 1 cubic meter of soil from the canal, and increased erosion could directly raise canal operating costs. Erosion would also reduce the capacity of existing water storage areas by siltation. The forest remaining in the Canal watershed is partly adjacent to the canal and partly in the far eastern portion of the watershed. The human population in the watershed area, according to the U.S. Agency for International Development, is growing at 5 percent per year and pressure to clear the remaining areas of forest for temporary agricultural use is great and increasing.

Until the implementation of the new Panama Canal Treaty, the Smithsonian Tropical Research Institute administered the 1,650 hectare island of Barro Colorado—the largest island in Gatun Lake which is the principal water storage basin of the canal watershed. In accordance with the new treaty and with the 1940 Western Hemisphere Convention for the Protection of Fauna, Flora, and Natural Areas, Barro Colorado Island and adjacent peninsulas with an additional total area of nearly 4,000 hectares, were designated the Barro Colorado Nature Monument under the administration of the Smithsonian Tropical Research Institute. It is of interest to note that the administration of the monument by STRI is not limited by the life of the Panama Canal Treaty.

The Smithsonian Tropical Research Institute is, quite naturally, very active in the field of environmental protection in the canal watershed. The Institute has a force of eight wardens and one supervisor who conduct a 24-hour a day patrol of the areas under its jurisdiction. The Smithsonian's fiscal year 1981 budget request includes an appeal for seven additional game wardens and a resident naturalist to augment the protection of this valuable park. In addition, a total of more than 11 kilometers of fencing has been erected to protect critical mainland areas, and a management plan for the entire area is now being prepared in conjunction with the Wildlands Management Unit of the Agricultural Research Unit—CATIE—in Costa Rica and with the U.S. National Park Service.

On March 29, 1979, President Royo declared the intention of his government to make a large area—22,000 hectares—of the watershed lying adjacent to the Barro Colorado Nature Monument into a national park when the area reverted to the administration of Panama on October 1, 1979. The declaration instituting the park has not yet been enacted, but the area has been declared a special forest by the agency of the Ministry for Agricultural Development that is charged with national conservation of natural resources (RENARE). The area is presently intermittently patrolled by two guards from RENARE who are accompanied by one armed soldier.

A loan of $10 million has been made to the Government of Panama by the U.S. Agency for International Development for protection and improvement of the canal watershed and two watersheds in other parts of the country over the next 5 years. The stated purposes of the loan are: (1) Strengthening of the agency RENARE; (2) reforestation in deforested areas; (3) agrosilviculture; and (4) silviculture.

Some reforestation has started and several plantations of cashew trees in company with castor beans have been initiated as agrosilvicultural projects.

The Joint Commission on the Environment, as called for in the new treaty, has not yet had its first meeting. This is regrettable since projects that should have been subjected to their review and approval have already begun—for example, a 6,000 unit housing development in the Colon area. It appears that the Commission will have an uphill struggle to effectively influence matters affecting the environment.

A related problem lies in the fact that the general level of concern for environmental matters is relatively low, even at administrative levels. The practical importance of sound environmental policies is not broadly appreciated.

I might add an aside: Since this was written we have had very positive reaction from the Government of Panama. We arrested two poachers in the Barro Colorado Nature Monument, and they were sentenced to 60 days in jail, a much stiffer sentence than the U.S. courts administered when they had responsibility for that area.

It is unpredictable, for example, how a laxity toward the enforcement of existing laws will affect the spread of hoof-and-mouth disease into, and through, Central America. The Inter-American Highway is steadily progressing toward the Colombian border. A large park on the frontier with Colombia is planned, which, theoretically, will act as a buffer to prevent the transmission of the disease northward. Although it is against the law to "colonize" the sides of the highway, adventitious agriculturalists have already cut the forest in a strip more than 100 meters wide for the entire existing length of the road. They are cutting the forest almost before the extension of the engineering pilot road reaches into a new area, and one must seriously wonder whether or not the barrier park can succeed in its objectives.

The proposed construction of a sea-level canal is now very much a preoccupation of the Republic of Panama, with many people in favor of it, some against, and a few wanting to examine the possible economic and ecological effects before committing themselves. In 1977, at the last National Research Council Review, scientists from the Smithsonian Tropical Research Institute stated their belief that a major program of investigation into the possible ecological effects of the construction of this canal should be made as a primary step in its planning. Dr. David Challinor, Assistant Secretary for Science at the Smithsonian Institution, testified before this subcommittee in June 1978, about the issues such a plan should address and a means of undertaking the broad scale study which we believe is essential. No plans for a study have been made, yet the Japanese have already sent a delegation to Panama to explore the possibilities of canal construction. An indication of the seriousness of the interest of the Panamanians in this possibility is that President Royo will go to Japan to continue the discussions in the very near future.

I would like to add that the problem of tropical deforesiation in the former canal zone is merely a tip of the iceberg. Tropical deforestation is one of the major unperceived, or poorly perceived problems of this country with manifestations much further reaching than the Panama Canal watershed.

Throughout the tropical regions of the world an area the size of Delaware is being deforested every week; an area the size of England every year.

These forests temper the climate of the world and provide fuel for much of the world. These forests are important in protecting the genetic reservoirs of the highest diversity of life on this planet, a diversity which has provided many of the food crops and medicines that we use. It is in our future national interest to support the establishment and maintenance of preserves and parks in the forest regions throughout the world.

These are reservoirs that we will need in the future, reservoirs of genetic diversity for which technology cannot provide substitutes in the future.

These are living resources, and once extinct, they are gone forever.

Thank you, Mr. Chairman.

I will be glad to respond to any questions.

Mr. Hubbard. Thank you for your statement, Dr. Rubinoff.

My first question regards environmental consciousness. In your statement you seem to paint a rather somber picture of the consciousness of environmental protection in the canal area. You state that the "Commission will have an uphill struggle to effectively influence matters affecting the environment." You further state that "The general level of concern for environmental matters is very low." It would seem that some strong measures are needed to impart this consciousness. What do you recommend to the United States to achieve this objective?

Dr. **Rubinoff.** Well, I think that there are a variety of things that can be done.

One is the support of conservation organizations throughout Latin America, and we at the Smithsonian are attempting to do this in a small way, in the Republic of Panama.

We have had teacher training seminars on conservation matters, and a number of the teachers who attended these courses have gone back and started conservation clubs in their schools. There is a conservation ethic that has to be developed and this takes some time. It will probably take another generation which has to grow up with these ideas in mind.

In the interim, I think a very strong action has to be taken and that is that the United States should pay for the conservation of natural areas. There is a model that I think would work in the Republic of Panama as well as elsewhere in the Tropics. It is in our national interest. These are resources that we are going to need in the future. Just as we pay the Arabs for their social security when their oil runs out—we pay more than the cost of exploration, refining, and transportation of oil.

We are going to need these tropical genetic resources in the future, and every year we should be paying for these reserves throughout the tropical world; we could set up an inspection program whereby the amount that is paid is dependent upon the number of squatters being kept in check and the number of acres that are kept forested.

These are the types of programs that I think we need. A long-term program of education and an immediate program of protection through payments.

Mr. **Hubbard.** Dr. Rubinoff, do you envision a potential problem with the two governments being receptive to the Joint Commission of the Environment's recommendations?

Dr. **Rubinoff.** I would think not. It seems to me that the atmosphere between the two nations has improved considerably since the treaty. I would imagine that there would be no problems.

Mr. **Hubbard.** Regarding dredging costs, based on the figures that you present on page 1 of your statement, it would appear that due to deforestation the Canal Commission is likely to be spending significantly greater amounts in future years for dredging of the canal. At the same time continued soil erosion would cause draft limitations for vessels transiting the canal and thus reduce tolls receipts. So, we would be losing money in two ways, not to mention the human and wildlife aspects of the problem.

Has the Smithsonian done any studies calculating the economic effects of deforestation, or have such studies been done by other agencies?

Dr. **Rubinoff.** We have attempted to do some studies. I am afraid I do not have the data with me.

Perhaps I could provide it for the record.

What are the alternative uses of leaving the forests in its natural state, how is this economically possible? I think we have data on that.

Mr. **Hubbard.** Repeat that last sentence, if you would?

I did not hear you.

Dr. Rubinoff. We have some studies on how leaving the forest can be economically viable. We are attempting to develop data on rearing certain organisms for food while leaving the forest intact.

But I do not have the data with me. I will have to provide it.

Mr. Hubbard. Will you please provide that for the record?

Dr. Rubinoff. I will do it.

[The following was received for the record:]

Economic Viability of Forests

In the lowland humid tropics the choice of removing the trees from an area or attempting to exploit the standing forests must be made while keeping both the short and long term consequences in mind. The consequences of removing the trees are complicated by various factors, not all of which are well understood, but basically one or more of the following results are likely:

1. Profitable crops of maize or starchy roots can be grown from one to three years.
2. Pasture of various qualities (depending on what kinds of grass are introduced) can be grown for several more years and a small number of cattle per unit area can be raised, or the area is invaded by fire resistant pest grasses in which case the area is lost to human use.
3. Without further intensive input of fertilizers the pasture gradually deteriorates, the soil pulverizes or laterizes and the process of desertification begins.

We believe that with the development of special management techniques, forests consisting of native species can be exploited to give a sustained yield of protein and wood. We have not yet put the idea into practice, but recent studies on the population dynamics and ecology of native mammals (5 genera would be susceptible to wildlife management techniques: *Dasyprocta, Agouti, Dasypus, Tayassu* and *Odocoileus*—all five are readily acceptable in human diets) in combination with Iguanas, strongly suggest that a minimum yield of 50 kg./ha./yr. (dressed carcass weight) could be attained. In some cases the productivity of raising cattle could produce a greater yield over the short-run than raising these mixed species, but the latter is more likely to produce a long-run sustained yield.

In addition to the raising of native animals for a protein yield, the forest composition could be artificially altered so that a greater proportion of a) those species that are important as food for the managed animals, and b) those species that yield high quality wood, would be grown.

Mr. Hubbard. Are there any particular studies on this subject that you would recommend for inclusion in our hearing record?

Dr. Rubinoff. Not offhand, no.

I might add that there is a wide margin on this estimate of sedimentation rates and I think that some basic monitoring of the sedimentation rates in the lake should be initiated.

Mr. Hubbard. Regarding Panamanian Government efforts with respect to the environment, you tell us on page 2 of your statement that President Royo declared his intention to set up a national park in 22,000 hectares of the canal watershed. Has there been any particular reason why the park has not yet been dedicated?

Dr. Rubinoff. Not that I know of.

I think it is a question of getting the decree written and the margins defined accurately. I expect it will be announced relatively soon.

Mr. Hubbard. What positive signs for environmental protection have you seen emanating from either the United States or the Panamanian Government as a result of the entry into force of the new treaty?

Dr. Rubinoff. Well, from the part of the Panamanian Government, they appointed their commissioners to the joint commission immediately. The United States has now done the same.

They are planning a meeting. I think that is a positive sign. I think it probably should have happened a little more quickly.

On the part of the United States, there is a working committee that the Embassy in Panama has organized to provide the commissioners with basic information. That group has met a number of times.

There seems to be a greater awareness, in newspaper articles of environmental issues and it seems to be something that more and more people are becoming concerned about in the Republic of Panama, although it is going from a base that is much different than the levels, say, of the awareness that exists in the United States.

Mr. HUBBARD. Regarding the sea-level canal study you mentioned, your statement contained several points concerning the advisability of environmental studies in connection with any feasibility study for a sea-level canal. The problem of a shortage of water supply due to soil erosion would not be present if there were a sea-level canal. I suspect that you see other problems, however. What are some of the subjects to which environmental studies of a sea-level canal should be directed?

Dr. RUBINOFF. Well, our studies through the last 15 years in the Republic of Panama have indicated that there are a great variety of organisms living on one coast or another which do not exist in the other ocean and which might become serious problems if they were allowed access to the other ocean. Some of the more conspicuous ones which have been mentioned in the press are the Crown of Thorns starfish which occurs only in the Pacific Ocean and the Pacific sea snake. Less well known are at least 18 other species of coral reef predators that exist in the Pacific and that do not exist in the Atlantic Ocean. These would present a real threat to Caribbean coral reefs.

I have some photographs of some of these organisms which I can pass around if the chairman would like.

Mr. HUBBARD. All right, please let us look at them.

Dr. RUBINOFF. The issue that is most important to keep in mind, I think, in terms of ecological surveys, is that the biological studies necessary to evaluate the impact of the sea-level canal are long-term studies, studies that cannot be done in 6 months or a year.

There are many fluctuations in populations of both coasts, and many of these are natural fluctuations, some of periods of 3 or 4 years, or more.

There is no way that you can map and plot those fluctuations without studying them through two and a half cycles.

Consequently, if a canal is built tomorrow, every fluctuation of an organism that has an economic value would be blamed on the canal regardless of whether or not the actual construction had anything to do with a sudden reduction in the species.

So I think, in terms of protection from criticism, by fishermen and other groups, it is important that these studies be undertaken for at least a 5- or 10-year period.

Mr. HUBBARD. Thank you.

Regarding educational programs—and I am observing these beautiful pictures that you have presented to us in connection with the response you just provided—is the Smithsonian Institution continuing to conduct education programs concerning conservation of tropical forests for the local people in Panama?

Dr. Rubinoff. Yes; we are.

We have a variety of programs.

We are attempting to develop an interpretive program for the new national park. We have obtained several grants from private organizations which will help finance these programs and we also have applied for funds in our Federal budget for this. Our idea is that in the new national park, which is accessible to the major population centers of Colon and Panama City, if effective, will have a multiplier effect and create a demand for similar parks and natural areas.

We are continuing with our lecture program throughout the school system; we have prepared articles for the newspapers and television; and we have a film library on conservation films which we lend out to schools and social groups.

Mr. Hubbard. Have these educational programs been successful?

Dr. Rubinoff. As far as I can measure; yes. Judging by the number of new conservation groups which are formed in schools, and by private organizations. After the first course was given, five small groups organized themselves into various kinds of conservation organizations in the private sector.

Mr. Hubbard. In what other programs is the Tropical Research Institute working directly with Panama to foster conservation?

Dr. Rubinoff. For example, there is a World Bank loan to Panama to create nine dams in the Changuinola area of Panama. That is an area just south of the Costa Rican border on the Atlantic side. We have been invited to participate in the environmental assessment of those hydroelectric projects.

We have also worked with various groups in Panama concerning possibilities of establishing sea bird sanctuaries in the Pearl Islands; we have worked with the master planning group on the new national park; we have advised on the barrier national parks that are planned; and we have been involved in other sorts of activities such as those.

Mr. Hubbard. I am nearing a conclusion of my questions, Dr. Rubinoff.

Regarding the continuation of reforestation projects, after the 5-year AID reforestation project is completed, do you feel that Panama has the resources and the desire to be able to maintain these reforestation projects at a level suitable to insure a viable canal operation?

Dr. Rubinoff. That is a little difficult to say. I think they definitely have the desire to do it. Whether they will have the economic ability after 5 years to do so, I would not want to venture a guess.

I would hope that the United States, in its responsibility for the maintenance of the canal until the year 2000, would consider additional programs to aid in the reforestation and the maintenance of the reforested areas until that time.

Mr. Hubbard. Last, regarding wildlife, do you feel that the rich wildlife in the canal is protected by Panamanian law?

Dr. Rubinoff. Just about 2 weeks ago, in the newspaper, they announced new game laws and protection of wildlife measures by protecting endangered species and restricting private ownership of wild animals.

I think that the laws are adequate.

It is a question of enforcement at this point and it is a little early to tell.

I think from the recent signs I have indicated, for example, the courts dealing very serverely with the poachers that we arrested, that administratively and legally, these laws probably will be enforced. It is easier to enforce the wildlife laws than to prevent deforestation.

In deforestation, we are dealing with people's subsistence and very often the wildlife destruction is more recreational and easier to stop.

Mr. HUBBARD. Congressman Bauman, the ranking minority member of the subcommittee.

We appreciate your being here.

Mr. BAUMAN. No questions.

Mr. HUBBARD. He has no questions.

Congressman Livingston?

Mr. LIVINGSTON. Just one.

Dr. Rubinoff, I have seen some reports from the CIA that the world is going to be facing increasing food shortages due to lack of farmland throughout the world.

How does that relate to the need for reforestation, and what are your projections for the future regarding conflicts between the need to increase farmland versus ecologically needed new forests?

Dr. RUBINOFF. It is a very difficult situation.

At least some people understand the need for preservation of these resources which we are going to need ultimately.

On the other hand, there are immediate problems in the country for food, as you pointed out. I think it is a question of distribution somewhat. There is a potential for losing our food. It is a question of changing economic orders. That is a long-term goal, an ultimate goal.

I do not think that there is going to be an opportunity—there would not be any forest left by the time we change the world order. What I think we need is a proximate solution as well, one that will protect areas now, by paying for their protection and thus insuring that some of this tropical genetic reservoir is available in the future.

For example, if we have a shift in our climate, as has happened before, and we go back to those reservoirs for food, since many of our crops used in temperate areas are derived from tropical plants, we would not find any. There would not be any left.

We are going to be stuck. These tropical forests are resources that do not survive in museums and in many cases the organisms therein are undescribed; the tropical area is less known scientifically than anywhere else in the world.

I think that the only way to protect them is by paying for the use of those lands as parks. The nations that do not have those resources which are largely the temperate, wealthier nations, need to pay the tropical nations for the protection of their forests.

That is the only solution I can see in the short term.

Mr. LIVINGSTON. You do view this as a continuing conflict?

Dr. RUBINOFF. Absolutely.

Mr. HUBBARD. Just as a matter of interest, what kind of overhaul of the economic order do you envision?

Dr. RUBINOFF. I would recommend looking at Dr. Norman Myers' book, "The Sinking Ark." I do not think his solution is going to work. His solution is a long-term goal, I cannot justly summarize here.

Mr. LIVINGSTON. Thank you.

Thank you, Mr. Chairman.

Mr. HUBBARD. Thank you Congressman Livingston.

We will call on Mr. Terry Modglin, the head of our Panama Canal Subcommittee staff, for questions.

Mr. MODGLIN. Thank you, Mr. Chairman.

Dr. Rubinoff, I want to follow up on one of the chairman's questions concerning the cost of dredging the Panama Canal as a result of water runoff resulting from deforestation of the watersheds. You imply in your statement, although you do not state directly, that the deforestation of the watershed could be a financial hazard to the canal, and that it would cut short the water supply for the existing canal.

There are apparently two schools of thought on this particular subject as to whether or not the deforestation of the canal watershed will result in less of a water supply for the canal.

The Office of Technology assessment work paper states: "no reliable body of data exists on the quantitative effects of deforestation on weather, soil erosion, water storage and water table." Further, the OTA study pointed out that the Panama Canal Company had done a review of the water supply problem and that particular study, according to the Company, did not show a measurable effect on the water supply as a result of the deforestation of the watershed.

At the same time as the thesis exists that deforestation will not cut the canal's water supply, the OTA study pointed to a number of expert and Panamanian sources which indicated that the water supply of the canal was indeed in danger in the future as a result of the watershed deforestation.

For the purposes of the record, could you make clear on which particular side of this argument your position falls and how you respond to the statement that there is no reliable data to indicate that the water supply of the canal is in danger?

Dr. RUBINOFF. While it is true there is not a great amount of data, I think there are two issues. One is water runoff which will continue and probably not be accelerated by deforestation.

I think, however, there is no question that sedimentation does increase when forests are removed and the topsoil will come off. I think one of the pictures shows on the slope of a canal peninsula what will happen when the rains come and that soil is going to wash right into the canal.

So I think there is no question about the sedimentation part of it.

There are more technical problems about what happens to the water where there is no forest to hold it.

Certainly, these are areas which are not all scientifically resolved.

When the forest is removed, the rapid evaporation and evaporation is changed, too. In fact, the weather pattern can change also. More data is needed.

Mr. **Modglin**. Another question that I have concerns the national park in Panama. You spoke of President Royo's plans to dedicate a national park; that park would consist of a large number of hectares in the canal watershed. In previous testimony before this subcommittee, Dr. Challinor of the Smithsonian Institution talked about the Nature Monument that was going to be preserved in connection with Panama on Barro Colorado Island. Could you differentiate between those two projects, and indicate what land would be included within the territory of the park and the Nature Monument?

Dr. **Rubinoff**. There are two separate areas. May I use the map? The negotiators of the Panama Canal Treaty recognize the value of the work that has been going on since 1923, on Barro Colorado Island, and included in it the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere signed by President Roosevelt in 1940.

In addition, they recognized the need to have stepping stones across the canal area and to provide a buffer zone from the agricultural developments which we see going on in this area.

So they included—they authorized the Republic of Panama to lease to the Smithsonian, until 1999, an area on the west bank which has subsequently been determined to be this peninsula and this area here, and they authorized the Panama Canal Commission to continue to lease to the Smithsonian, until 1999, peninsulas on the west bank, from the railroad to this section here, this peninsula, and this one.

In 1999, when the treaty terminates, these areas become part of the Nature Monument which is founded under the Hemispheric Convention. It will be registered with the OAS. This area is to be used—to be administered by the Smithsonian for research purposes. The national park which President Royo has declared, goes from Summit Garden, which is here, all the way through the pipeline area, along the margin of the old Canal Zone border, which was somewhere around here.

So, except for this red area near Gamboa all of this area will become a National Park. It has one of the highest bird species and plant species diversity in Central America, and it is extremely accessible by virtue of this 14-mile road which was built in World War II to service a Navy pipeline that passes through this area. There was a declaration that this area will be a national park with all the appurtenances of a national park: public access, public education, recreation, and preservation of wildlife.

On other hand, this area—the Barro Colorado Nature Monument—will be restricted to research purposes.

Mr. **Modglin**. Thank you, sir.

Mr. **Hubbard**. Thank you, Terry Modglin, our staff director for the Panama Canal Subcommittee.

Any further questions from any Member of Congress?

Mr. Luis Luna, our staff member for the minority side, do you have any questions?

Mr. **Luna**. No, sir.

Mr. **Hubbard**. Dr. Rubinoff, I believe that is all, unless there are other questions later. Dr. Ira Rubinoff, Director, Smithsonian Tropical Research Institute, a witness before our subcommittee many, many times, we appreciate your helpful information and the informative answers to the questions presented to you.

The past witness has been the director of the institute known as STRI for many years, and has had contact with his Panamanian scientific counterparts.

Our next witness is Mr. Thomas Constant, another welcome witness familiar to us. He will represent the views of the Panama Canal Commission before our subcommittee today.

In its daily operations, the Panama Canal Commission must adhere to a significant number of environmental laws and regulations. How these are being implemented, how the new treaty arrangement affects their application, and whether prescriptions of legal and regulatory authority are needed constitute some of the concerns of our subcommittee. Moreover, in terms of our bilateral relations with Panama, I think the members of this subcommittee are also interested in knowing the mechanisms by which the Panama Canal Commission, the operating agency for the canal, will relate to the Joint Commission on the Environment, an advisory binational body envisioned in the Panama Canal Treaty.

Tom Constant, as always, we look forward to hearing your testimony and welcome you here this morning.

STATEMENT OF THOMAS CONSTANT, SECRETARY, PANAMA CANAL COMMISSION

Mr. **Constant**. Thank you, Mr. Chairman, and members of the subcommittee.

I am Thomas M. Constant, Secretary of the Panama Canal Commission. I am pleased to appear before you today to describe the Commission's role in decisionmaking affecting the environment in the canal area, to comment on environmental matters contained in the working paper prepared by the Office of Technology Assessment (OTA), and to brief you on actions taken by the Commission which address current and potential sources of environmental concern.

If you have no objection, Mr. Chairman, I will abbreviate where appropriate, and then provide my entire statement for the record.

Mr. **Hubbard**. That will be fine. It is so ordered.

[The following was received for the record:]

Statement of Thomas Constant, Secretary, Panama Canal Commission

Mr. Chairman and members of the subcommittee, I am Thomas M. Constant, Secretary of the Panama Canal Commission. I am pleased to appear before you today to describe the commission's role in decision-making affecting the environment in the canal area, to comment on environmental matters contained in the working paper prepared by the office of technology assessment (OTA), and to brief you on actions taken by the commission which address current and potential sources of environmental concern.

DESCRIPTION OF AGENCY'S ENVIRONMENTAL MANAGEMENT OBJECTIVES AND RESPONSIBILITIES

I would like to begin by giving you some background information on the agency's environmental management program and federal and canal zone regulations that continue to be applicable to our operations.

When I refer to actions taken by this agency prior to October 1, 1979, I am, of course, referring to the Panama Canal Company/Canal Zone Government, and after that date, the Panama Canal Commission. The environmental management objectives for the Panama Canal Commission focus on compliance with Federal environmental laws, regulations, policies, and Presidential executive orders which apply to the canal area, the operations of the Panama Canal, and which impact on the quality of the natural and human environment. As a general proposition, under section 3 of Public Law 96-70, the environmental legislation which was applicable specifically to the former Canal Zone (citations attached for the record) continues to be applicable to the areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements. Other laws which apply to Federal agencies generally, without geographical limitation, also are applicable to the Commission.

Our formulation of environmental conservation goals according to provisions of Federal statutes and Canal Zone laws, has resulted in an increased awareness of the quality of the environment in the canal operating area in recent years. A summary of actions taken by the agency to protect and enhance the local environment for each major area of concern follows:

1. Oil and hazardous substance disposal

Since 1971 the agency has been complying with section 311 of the Federal Water Pollution Control Act, as amended, which prohibits the discharge of oil and other hazardous substances into navigable waters of the United States. An oil and debris control section was established by the agency to deal with spillage of oil and hazardous chemicals in rivers, lakes, and harbors.

2. Marine sanitation disposal

In compliance with section 312 of the Federal Water Pollution Control Act, the agency has scheduled the installation of sanitary control systems aboard towboats and has developed the capacity to receive onshore and treat marine sewage.

3. Water and air quality

The policy of the agency is to meet all legal requirements as to water quality and to meet the intent of Federal regulations to the extent possible under our unique environmental circumstances. A water quality control laboratory was established by the agency in fiscal year 1972. This laboratory measures and characterizes the existing water quality parameters of the marine and fresh waters of the canal area and has the responsibility for determining the effects of waste water effluents on the water quality. The laboratory is also charged with the sampling and measurement of air quality according to Federal standards, even though they do not apply to the canal area.

4. Aquatic weed control

Control of aquatic weeds has been the subject of an intensive study by the agency. Approximately seventeen species of aquatic plants are common to canal fresh waters. Some of the species such as hydrilla and water hyacinth are the sources of navigational and mosquito breeding problems. An integrated biological, chemical and mechanical control program is currently underway to control these and other problem plants.

5. Pest control

As a direct result of the National Environmental Policy Act (NEPA), the agency filed a pesticide program with the Federal working group on pest management. Our pest control program maximizes drainage and breeding source reduction to minimize the utilization of pesticides in the canal operating area.

6. Solid waste and hazardous and toxic substances disposal

All non-hazardous solid waste is disposed of in Commission landfills located on the Pacific and Atlantic sides of the Isthmus. Refuse is disposed of daily according to sanitation specifications.

The limited quantities of toxic chemicals used by the agency are now handled and stored in accordance with Federal regulations. Planning for their safe disposal is underway and the creation of special dump sites is currently under study.

7. Dredged material disposal

The Commission is subject to the restrictions of the ocean dumping act, which prohibit discharge of material into ocean waters. All dumping of dredged material is within the inland waters of the canal operating area and at controlled dredge spoil sites on land.

8. Implementation of National Environmental Policy Act (NEPA)

The policies to be followed by Federal agencies are set forth in NEPA and ensure that effects on the environment are given appropriate consideration in Federal decision-making, along with the economic, technical and other considerations. Since 1977, the agency has prepared twenty-eight environmental impact analyses, and several others have been prepared with the assistance of outside consultants or by other U.S. agencies for projects within the canal area.

To assist in its administration of NEPA, the agency established an environmental quality committee (EQC) with the following responsibilities:

(1) the maintenance of an environmental control policy;

(2) the review of proposed policies, regulations and procedures to determine their effect on the local environment; and

(3) to coordinate environmental impact assessments and statements.

I would now like to address the specific areas oulined in the Chairman's letter announcing the hearing.

ROLE OF COMMISSION IN DECISIONMAKING AFFECTING THE ENVIRONMENT IN THE CANAL AREA

Following the signing of the Panama Canal Treaty of 1977, a binational working group was established in 1978, composed of representatives of agencies of the Government of the Republic of Panama and the Panama Canal Company/Canal Zone Government. This joint working group was to coordinate treaty implementation planning by both countries, while serving as a forum for discussion. The group discussed a number of issues in preparation for the implementation of the new treaty.

The binational working group called upon the expertise of 23 joint working subcommittees. One, an environmental subcommittee consisting of representatives from both Governments, was formed to coordinate plans on environmental issues of mutual concern. The environmental subcommittee also served as the point of contact between the agency and the Republic of Panama.

As its first task, the environmental subcommittee developed and implemented a plan to deal with the illegal cutting, burning and farming that were becoming acute problems in the former Canal Zone. Binational working group endorsement of a project to "continue anti-deforestation efforts in the Canal Zone" reflected the concerns of both Governments regarding the need to protect and enhance the canal watershed. The actions associated with this project fell into five broad categories: Planning; information/education; aerial and ground surveillance; relocation of limited numbers of squatters residing throughout the canal area; and selective reforestation. The anti-deforestation project was implemented as a cooperative activity with Panama over the period April 1978 through September 30, 1979. The project has since continued in the canal watershed under the responsibility of the Government of Panama's Ministry of Agricultural Development, as an integral component of Panama's watershed management program under Agency for International Development (AID) auspices. The Government of Panama has developed the necessary plans and programs to reverse deforestation and soil depletion, and to conserve the canal watershed.

The Panama Canal Commission continues its active role in the environmental decisionmaking process as it relates to the canal area. The environmental/energy coordinator for the agency is a member of an interim ad hoc technical secretariat, organised to provide technical support for the Joint Commission on the Environment.

Article VI of the canal treaty called for the establishment of the JCE for the purpose of recommending, as appropriate, to the two Governments, ways to avoid or mitigate the adverse environmental impacts which might result from their respective actions pursuant to the treaty. The JCE will be assisted and supported by a permanent technical secretariat for its operations. During the interim, before the appointment of the permanent secretariat, the ad hoc technical secretariat has been established to work in close collaboration with the U.S. Embassy in gathering, reviewing and evaluating existing environmental documents from the various local U.S. agencies. This interim group has also assisted in the development of work plans for the functions of the JCE as well as laying groundwork for the primary responsibilities the technical secretariat will have in assisting the JCE.

At present, the Panama Canal Commission representatives and the other members of the interim group are planning for the first meeting of the JCE in April in Panama.

COMMENTS ON ENVIRONMENTAL MATTERS CONTAINED IN THE WORKING PAPER OF THE OFFICE OF TECHNOLOGY ASSESSMENT

With respect to the functions performed by the Commission for the continuing management, operation, and maintenance of the canal, we do not expect any significant change in existing environmental policy. As a Federal agency, we are required under NEPA to review new and on-going agency actions for possible adverse environmental impact and to prepare environmental assessments or statements as appropriate. Following is a summary updating specific environmental issues addressed in the OTA report:

Oil pollution

The Panama Canal Commission is responsible for oil pollution control in canal waters, including the north and south approaches to the canal. As in the past, the Commission maintains an oil pollution control officer on both the Atlantic and Pacific sides whose primary responsibility is to clear ships after bunkering operations for passage through the canal. The control officers also maintain liaison with Panama's pollution control officers and will lend assistance when necessary on a cost recovery basis.

Panama's newly formed oil pollution department has a limited oil recovery system for pier area use. This capability is being expanded.

Weed and debris control

The Commission continues to be responsible for aquatic weed control, debris, etc., within the canal operating area, and has the authority to exercise aquatic weed control measures in outlying areas.

Dredging operations

Dredging operations by the Commission continue as an essential function to the canal.

Disposal of dredge spoil has been carefully controlled. Suction dredge spoil areas have been expanded and to date, no new areas have been developed. Spoil disposal in Gatun Lake is carefully monitored and controlled.

Environmental sanitation

The level of environmental health and sanitation of the canal area five months after the implementation of the treaty remains high. A sanitation unit was retained by the agency to carry out a community-Commission sanitation program. Presently, the unit enforces such measures as the control of pests and disease vectors, and plumbing, water and waste standards. The unit also monitors food hygiene, pesticide use, refuse collection and disposal, swimming pools, and recreation sites within the canal operating and housing areas.

Panama sanitation laws and regulations apply to areas released to Panama and agreements have been reached with Panama health officials for specific cooperative activities. Joint activities such as combined vector control teams to control mosquitoes are working well. No increase in illness or disease outbreaks has occurred.

The Commission retained a vessel quarantine activity for rat inspections aboard ships at anchorage and moored to piers made available to the Commission. These measures prevent the introduction of rodent borne disease on each side of the isthmus. This activity is closely coordinated with Panama quarantine officials and has been working well to date.

Wildlife preservation

On the status of wildlife preservation, the Panamanian Bureau of Renewable Natural Resources (RENARE) has recently issued two resolutions impacting on the conservation of native animals. The first deals with an expansion of their list of endangered species; a number of the species now included were previously protected by U.S. public law. The second calls for the registration of all wild animals in captivity and Panama has now prohibited the removal of any wild animal pets without a permit. The protective measures, together with the conversion of critical habitats to national parks (Madden Forest Reserve, pipeline road area), national monuments (Barro Colorado Island), and ongoing anti-deforestation actions, are contributing to the prevention of wildlife depletion and forest habitat destruction.

PRESENT AND POTENTIAL ENVIRONMENTAL PROBLEMS IN THE CANAL AREA

Panama has instituted environmental controls and evidences increasing interest in protecting the environment. However, if controls were not maintained, deforestation activities in the watershed could accelerate the rate of storm flood runoff and impact unfavorably on flood controls.

The canal area, in its present state, preserves the habitats of native vegetation and animal species. With the recommendations of the JCE, Panama can continue the development of the canal area through carefully planned actions to avoid or mitigate potential adverse environmental impacts.

CONCLUDING REMARKS

We have not observed any adverse environmental impacts as a result of implementation of the Panama Canal Treaty. We will continue to work closely with Panama on environmental control measures and their enforcement. Studies such as the Republic of Panama watershed management program, which was mentioned previously, are illustrative of Panama's concern for the future of the canal area. The environmental controls, monitored by the JCE, should insure the preservation of the waterway in the years ahead.

Should the committee desire additional information on the subject, we shall be pleased to furnish it. This concludes my statement. Thank you.

ATTACHMENT I

ENVIRONMENTAL LAWS, REGULATIONS, AND POLICIES AFFECTING THE PANAMA CANAL COMMISSION

1. Federal statutes

A. National Environmental Policy Act of 1969 (P.L. 91-190); 1970.

B. Occupational Safety and Health Act of 1970 (P.L. 91-595) (where it regulates the environment).

C. Clean Air Act of 1970 (P.L. 91-604), as amended. (Subchapter II, Emission Standards for Moving Sources).

D. Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500) (Section 311, Discharge of Oil and Hazardous Substances; Section 312, Marine Sanitation Devices).

E. Marine Mammal Protection Act of 1972 (P.L. 92-522).

F. Marine Protection, Research and Sanctuaries Act of 1972 (P.L. 92-532) (Ocean Dumping Act).

G. Noise Control Act of 1972 (P.L. 92-574) (Section 4).

H. Endangered Species Act of 1973 (P.L. 93-205).

I. Safe Drinking Water Act of 1974 (P.L. 93-523).

J. Toxic Substances Control Act of 1976 (P.L. 94-469).

K. Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act of 1976 (P.L. 96-580).

2. Executive orders

A. E.O. 11514, "Protection & Enhancement of Environmental Quality" March 7, 1970 (35 FR 46, 4247).

B. E.O. 12088, "Federal Compliance with Pollution Control Standards" (FR, October 17, 1978).

C. E.O. 12114, "Environmental Effects Abroad of Major Federal Actions" (FR, January 9, 1979).

3. Former Canal Zone regulations that continue to apply to the commission

A. Establishment of Procedures to comply with the National Environmental Policy Act, 41 FR 86, May 3, 1976.

B. Code of Federal Regulations, Title 35, Chap. 1, Canal Zone Regulations: Part 61—Health, Sanitation, and Quarantine (includes control on use of pesticides, herbicides, insecticides & rodenticides). Part 103, Sec. 21, Precautions against emission of sparks, smoke or noxious gases, etc., from vessels; Sec. 22, Vessels at fuel berths. Part 113, Hazardous Cargoes; Subpart B, Handling, Loading and Unloading of Explosives; Subpart C, Harzardous Liquid Cargoes; Subpart D, Other Hazardous Materials.

4. Canal Zone administration and regulations

A. Chapter 5, Part 169, Subpart B, Protection of Wildlife.

Mr. CONSTANT. I would like to begin by giving you some background information on the agency's environmental management program and Federal and canal zone regulations that continue to be applicable to our operations.

Our formulation of environmental conservation goals according to provisions of Federal Statues and canal zone laws, has resulted in an increased awareness of the quality of the environment in the canal operating area in recent years. A summary of actions taken by the agency to protect and enhance the local environment for each major area of concern follows:

Since 1971 the agency has been complying with section 311 of the Federal Water Pollution Control Act, as amended, which prohibits the discharge of oil and other hazardous substances into navigable waters of the United States. An oil and debris control section was established by the agency to deal with spillage of oil and hazardous chemicals in rivers, lakes, and harbors.

In compliance with section 312 of the Federal Water Pollution Control Act, the agency has scheduled the installation of sanitary control systems aboard towboats and has developed the capacity to receive onshore and treat marine sewage.

The policy of the agency is to meet all legal requirements as to water quality and to meet the intent of Federal regulations to the extent possible under our unique environmental circumstances. A water quality control laboratory was established by the agency in 1972. This laboratory measures and characterizes the existing water quality parameters of the marine and fresh waters of the canal area and has the responsibility for determining the effects of waste water effluents on the water quality. The laboratory is also charged with the sampling and measurement of air quality according to Federal standards, even though they do not apply to the canal area.

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The Commission is subject to the restrictions of the Ocean Dumping Act, which prohibit discharge of material into ocean waters. All dumping of dredged material is within the inland waters of the canal operating area and at controlled dredge spoil sites on land.

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At present, the Panama Canal Commission representatives and the other members of the interim group are planning for the first meeting of the JCE in April in Panama.

With respect to the functions performed by the Commission for the continuing management, operation, and maintenance of the canal, we do not expect any significant change in existing environmental policy. As a Federal agency, we are required under NEPA to review new and ongoing agency actions for possible adverse environmental impact and to prepare environmental assessments or statements as appropriate. Following is a summary updating specific environmental issues addressed in the OTA report.

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Panama's newly formed oil pollution department has a limited oil recovery system for pier area use. This capability is being expanded.

The Commission continues to be responsible for aquatic weed control, debris, et cetera, within the canal operating area, and has the authority to exercise aquatic weed control measures in outlying areas.

Dredging operations by the Commission continue as an essential function to the canal.

Disposal of dredge spoil has been carefully controlled. Suction dredge spoil areas have been expanded and to date, no new areas have been developed. Spoil disposal in Gatun Lake is carefully monitored and controlled.

The level of environmental health and sanitation of the canal area 5 months after the implementation of the treaty remains high. A sanitation unit was retained by the agency to carry out a community-Commission sanitation program. Presently, the unit enforces such measures as the control of pests and disease vectors, and plumbing, water, and waste standards

That is within the canal area.

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The canal area, in its present state, preserves the habitats of native vegetation and animal species. With the recommendations of the JCE, Panama can continue the development of the canal area through carefully planned actions to avoid or mitigate potential adverse environmental impacts.

We have not observed any adverse environmental impacts as a result of implementation of the Panama Canal Treaty. We will continue to work closely with Panama on environmental control measures and their enforcement. Studies such as the Republic of Panama watershed management program, which was mentioned previously, are illustrative of Panama's concern for the future of the canal area. The environmental controls, monitored by the JCF, should insure the preservation of the waterway in the years ahead.

Should the committee desire additional information on the subject, we shall be pleased to furnish it.

This concludes my statement, Mr. Chairman, and I will be happy to answer any questions.

Mr. **Hubbard**. Thank you very much, Mr. Thomas Constant.

Regarding squatters in the Panama Canal area, before the termination of the canal zone on October 1, there had been a problem with squatters in the zone, near the banks of certain stretches of the Panama Canal. These squatters were practicing slash-and-burn agriculture near the waterway, giving rise to a dangerous situation which ultimately threatened the water supply of the canal.

Tom, since October 1, what measures have been taken to deal with the problem of squatters in the canal zone?

Mr. **Constant**. We do have joint patrols working with the Panamanians where we go through the canal areas, attempting to locate any squatters.

Last year, several actions were taken, as we mentioned. Squatters were removed in a joint effort by the agency protection forces and Panama National Guard.

Plans for removing squatters located in the Pacific and Atlantic military areas of coordination and defense sites have been worked out and at last report, Panama has begun working on the relocation plans for a number of squatter families.

We have not personally removed any ourselves.

Mr. BAUMAN. Mr. Chairman?

Mr. HUBBARD. Congressman Bauman.

Mr. BAUMAN. To follow up on a question on that, Tom, since the area under U.S. jurisdiction has shrunken, have you seen a movement of squatters into the areas where they were formerly excluded by reason of U.S. jurisdiction? Has there been a mass movement?

Mr. CONSTANT. No, sir, we do not see a mass movement.

We do not have the people out there anymore checking to see, so we do not have any measure of the number if there have been any increases. To our knowledge, there has not been any major movement into the former canal areas.

Mr. BAUMAN. It would seem to me that this would be a good test of the Panamanian Government's will to control the problem: whether they allow squattors to move into the restricted areas. In the past we had a difficult time of getting them evicted from the area.

Thank you, Mr. Chairman.

Mr. HUBBARD. Thank you, Congressman Bauman.

Mr. Constant, are there squatters remaining in the canal operating area, who practice slash-and-burn agriculture?

Mr. CONSTANT. Not in the canal area, no, sir. In the canal operating area, that is.

Mr. HUBBARD. Exactly how does the Canal Commission coordinate with Panama to deal with squatters?

Mr. CONSTANT. We work with the Guardia Nacional by pointing out if we locate any of these squatters, and leave it up to Panamanian control measures in order to move any people.

Mr. HUBBARD. What tangible signs are there of improvement or deterioration of the situation?

Mr. CONSTANT. Sir, we have no tangible measure of any deterioration. Of improvement, I think we can say there is a status quo. It is continuing at approximately the same level that it was when the treaty went into effect in October.

Mr. HUBBARD. All right.

Regarding statutes relating to hazardous cargoes, marine accidents, inspection and registration of vessels and sanitary requirements, in your statement you cite many of the U.S. statutes on environmental protection that apply to the canal area. Most of these are implemented by regulations published in title 35 of the Code of Federal Regulations.

On December 19, the Panama Canal Commission published new regulations pursuant to the Panama Canal Treaty and the Panama Canal Act. Those regulations continued the substance of previous regulations relating to hazardous cargoes, marine accidents, and their investigations, control, and responsibility; licensing of officers; inspection and registration of vessels; and sanitary requirements, vessel waters, garbage, and ballast. However, with respect to each of these subject areas, the penalty provisions of the regulations were eliminated.

How is the authority of the Commission in these areas to be enforced? If Panama is to hold the enforcement authority, what agreements have been made to insure that our regulations and enforcement of them is coordinated?

To repeat, first back to that earlier question. How is the authority of the Commission in these areas to be enforced?

Mr. CONSTANT. With respect to the levying of any charges against individuals, for instance, illegal dumping of oil in the canal areas, the only means of enforcement that we have in the canal is to report to the U.S. Coast Guard who are responsible for the enforcement of the Federal Water Pollution Control Act in the U.S. waters and in the canal area.

If there should be any dumping or any oil pollution, and we in the canal area use our equipment to clean it up and there is a cost involved, we would transfer that cost to the agent of the vessel involved in that spillage.

We would bill him for that cost.

As far as enforcement, it would be up to the Coast Guard to bring action if the vessel did not comply with the law or agree to pay the bill. We have not had that problem because the vessel will want to go through the canal and if there have been any spills of that nature, any charges have been paid by them.

Mr. HUBBARD. Let me ask you this then:

Have you touched on this? I did not hear you comment on this in its entirety. Is Panama to hold the enforcement authority in these areas? Is that correct, since you mentioned the Coast Guard would have the enforcement authority?

Mr. CONSTANT. The Commission is immune from the jurisdiction of Panama within its waters, within the waters of the canal operation. Panama is prohibited from issuing, adopting, or enforcing any law, decree, or international agreement or taking other action which purports to regulate or would otherwise interfere with the U.S. rights under the treaty.

What I am saying is that there are no enforceable laws other than the U.S. laws, in the canal area.

Panama does not have any authority to issue these laws controlling the waters and the pollution of waters in the canal area.

Mr. HUBBARD. All right.

Thank you.

Regarding Panama Canal Commission's budget for environmental matters, would you tell the subcommittee of the amounts budgeted in the fiscal year 1981 budget for each of the major environmental areas of interest outlined in your statement?

Mr. CONSTANT. Yes, sir.

For the control of aquatic weeds, for instance, the white amur fish, we have budgeted for $57,000 in fiscal year 1981. Other biological control, $45,000. Chemical and mechanical control of aquatic weeds, $70,000. Oil pollution, we have budgeted for $505,000 during fiscal year 1981. Environmental santitation—pest and disease, food, hygiene—$1.443 million, and marine sanitation control $220,000. Now that is for the provision of holding tanks on our floating equipment.

Mr. Hubbard. Again, under aquatic weed control, how much is the program to stock Gatun Lake? I believe you mentioned $57,000, did you not?

Mr. Constant. Yes, sir, for aquatic weeds.

Well, it is the total of $57,000, $45,000, and $70,000, or $172,000, because there are several programs included.

Mr. Hubbard. How much for stocking white amur fish?

Mr. Constant. $57,000, sir.

Mr. Hubbard. And these white amur fish are to eat aquatic weeds?

Mr. Constant. Yes, they have proven very successful in that effort.

Mr. Hubbard. How much has the treatment of aquatic weeds by chemicals been costing each year?

Mr. Constant. We combined that, sir, into chemical and mechanical, mechanical being where we rake out the aquatic weeds. The total is $70,000 for fiscal year 1981. For fiscal year 1980 it was $64,000.

Mr. Hubbard. Why the increase?

One of my constituents may want to ask me that.

Mr. Constant. It is just the inflation in cost of salaries, sir, more than anything else. The weeds themselves are not getting anymore expensive to take out. It is merely the matter of paying the people to do it. The weeds are a hazard to navigation since they can foul the propellers.

Mr. Hubbard. Regarding water and air quality in the Panama Canal, the third category of major environmental concern outlined in your statement.

According to the measurements and samplings of the Commissions, has the air quality in the canal area and particularly the water quality of canal areas, been either improving or deteriorating in recent years?

Mr. Constant. Sir, I believe that our—I would have to provide specifics on that for the record.

But since October 1, there has been no degradation of either the water or the air quality in the canal areas.

I am not sure as to the actual progress of water control over the past years and I would have to provide that for the record, sir.

Mr. Hubbard. OK, please do.

[The following was received for the record:]

REPORT ON ENVIRONMENTAL QUALITY OF SURFACE WATER AND AMBIENT AIR IN PANAMA CANAL COMMISSION AREAS

SUMMARY

The lake waters in Panama Canal Commission (PCC) areas are generally of excellent quality and have not suffered any significant deterioration in the past seven years. River waters reaching the lake are of generally inferior quality, dependent on the amount and type of surface run-off in the watershed. The drinking water produced at the PCC Water Treatment Plants is of excellent quality. PCC Atlantic Marine waters in Limon Bay are of good quality with the exception of eastward areas influenced by sanitary contamination in Manzanillo Bay. PCC Pacific Marine waters are contaminated by sanitary pollution from Miraflores Locks to a point of 1.5 miles south of the Thatcher Ferry Bridge. Ambient air quality in the PCC areas is well within the recommended EPA Standards.

A. Water quality

The Environmental and Testing Laboratory of the Water and Laboratories Branch, has been monitoring water quality of the lake and marine waters within the Panama Canal Areas since calendar year 1972.

Originally, the water quality monitoring program extended to all lake and marine areas in the then existing Canal Zone, but has now been reduced to the Canal operating area. This report covers the water areas presently assigned to Panama Canal Commission activities under the new Treaty.

1. Gatun Lake waters.—Table 1 lists the average concentration levels found for specific parameters with environmental significance, throughout the Gatun Lake areas during calendar years 1972, 1975, and 1979, to outline trends during our monitoring program. As can be seen from this data, the water in this section of the lake is of good quality and there have been no significant changes in the water quality during this seven year period.

Gatun Lake waters in this section of the lake are generally of excellent quality with high transparency, low fecal coliform bacterial counts, almost neutral pH, and dissolved oxygen levels near saturation with less than 0.5 ppm difference between the surface and bottom strata. There are no thermoclines, and the temperature difference between surface and bottom levels are usually less than 0.4° C, with overall values ranging from 27.5 to 29.5° C throughout the year. The waters are soft (less than 50 ppm hardness), of low alkalinity (less than 40 ppm), and free of heavy contaminant metals and pesticide/herbicide residues.

The nutrient content of the water is low, but the constant influx from the lake watershed is enough to support a considerable biomass of submerged and floating vegetation. The solids content of the water varies seasonally with influx of rain and surface runoff, but turbidity in most open lake areas remains below 3.5 NTU's. The lake is in a mesotrophic state of eutrophication from a phosphorus standpoint, with an apparent high productivity, and forming a well-balanced ecosystem. The overall water quality is excellent for recreational purposes, and adequate to support a variety of aquatic life.

2. Gamboa Reach, Chagres River, and Gaillard Cut waters.—This water region begins in the Chagres River near the intersection with the Canal channel and Gamboa extending to the west through the Gamboa Reach to Gatun Lake and to the southeast through Gaillard Cut to Pedro Miguel Locks.

This section of the Panama Canal Commission channel receives most of its waters from Madden Lake and the watershed above the Lake in the Republic of Panama. This water originates in the upper Chagres and Pequeni Rivers, and consists mostly of run-off water traveling across Madden Lake as a density current, at a depth dependent on the temperature, silt load, and chemical content of the influx from the watershed. This current causes Madden Lake to be stratified, suffer from dissolved oxygen deficiencies in the middle strata and to have varying BOD and turbidity loads. Therefore, the waters received downstream in the lower section of the Chagres River have seasonal variations in bacteria, turbidity, BOD, nutrient, and oxygen content. The Chagres River also receives poor quality water (low dissolved oxygen and high bacteria and BOD levels) from the Chilibre River since its watershed extends to many urban developments in the Republic of Panama.

The Panama Canal Commission has one sewage outfall, servicing approximately 2,500 people, discharging into the Gamboa Reach area. This causes a localized increase in bacteria, BOD, and nutrients in the immediate vicinity of the outfall.

The waters in the Gamboa Reach area of the Canal are of varying quality, depending on the quantity and type of surface run-off in the watershed.

Table 2 gives the water quality found in samples representative of the lower Chagres River. While water from this station contains higher levels of bacteria, nutrients, turbidity, and lower oxygen content than open Gatun Lake waters, the quality of these waters in terms of metallic ions, and organics is still very acceptable.

3. Atlantic marine area.—The Panama Canal Commission waters in the Atlantic Marine Area extend from Gatun Locks to the breakwater. There are 11 sewage outfalls discharging into Atlantic Marine waters. The three main outfalls are Colon, 6.9 MGD (Panama); Rainbow City, 1.2 MGD (Panama); and Fort Gulick, .56 MGD (U.S. Army). Two outfalls discharge into Panama Canal Commission waters at Gatun (PCC) and Fort Davis (U.S. Army).

The waters in the Atlantic Marine Area under the control of the PCC generally contain less than 200 fecal coliform bacteria/100 ml., deriving mostly from the waste discharge in the adjacent Manzanillo Bay. Limon Bay waters have limited mixing with Caribbean Sea waters because of the breakwater and small tidal differences along the Atlantic Coast. The Canal provides daily influx of 125 x 10^6 cu. ft. of fresh water into Limon Bay through ship transits.

Table 3 shows the quality of the waters on the east side of the Canal channel as compared to the west side during calendar years 1972, 1975, and 1979. The data does not show any significant change in the water quality of the Limon Bay surface waters during this period. The poor quality of these waters as indicated by the high bacteriological, nutrient, and BOD levels derives from the sewage outfalls in the area. Levels of metals and other contaminants are generally low.

4. Pacific marine area.—The Panama Canal Commission Pacific Marine Area extends from Miraflores Locks to the Canal channel in Panama Bay. There are 11 sewage outfalls discharging into the Canal channel and Panama Bay. The three main outfalls are Albrook-Diablo (PCC) 1.7 MGD; Fort Clayton, (U.S. Army) 1.3 MGD; and Ancon-Curundu (PCC) 1.2 MGD. The Curundu River which empties into the Balboa Harbor also carriers a high sewage load from several communities in Panama City.

The waters in the Pacific Commission Marine Areas have sanitary contamination from the surrounding outfalls with fecal coliform bacteria levels ranging from 200 to 2000 counts/100 ml. Balboa Harbor and Panama Bay waters are open to the sea and subject to tidal differences, and the Canal provides daily influx of 118×10^6 cu. ft. of fresh water into this area through ship transits and the Miraflores Spillway.

Table 4 shows the quality of the waters in the Canal channel north of the Thatcher Ferry Bridge as compared to Canal channel waters south of the Bridge during calendar years 1972, 1975, and 1979. The data does not show any significant change in water quality of Pacific Marine waters during this period. Sewage outfalls are the major contributing factors which cause poor sanitary quality of the Canal channel waters, from Miraflores Locks, to a point 1.5 miles south of the Thatcher Ferry Bridge (Puente de las Americas).

B. Drinking water quality

The Panama Canal Commission operates two water treatment plants, one in the Atlantic area at Mount Hope and one on the Pacific area, at Miraflores.

The Mount Hope plant raw water inlet is located in the Monte Lirio area of Gatun Lake in the Republic of Panama. This section of the lake is partially isolated from the rest of the lake by the railroad causeway, and its water originates from the Rio Gatun watershed. The surface waters in this area are generally of good quality, with adequate oxygen content and are usually low in turbidity. Table 2 shows the quality of the water entering the Mount Hope Water Treatment Plant.

The Miraflores Plant has two inlets, one in Gamboa on the lower Chagres River, and one in Paraiso. The water feeding these intakes usually comes from Madden Lake and its watershed in the Republic of Panama, and has therefore, seasonal variations in turbidity, coliform count, and oxygen content. Table 2 shows the quality of the water entering Miraflores Water Treatment Plant intakes.

Daily checks are made on the quality of raw, settled, and filtered water at each water treatment plant. Table 5 shows the quality of the drinking waters produced as compared to EPA Drinking Water Standards. The quality of the drinking waters produced in both plants is well within the requirements of these standards.

C. Ambient air quality

In 1977, the Environmental and Testing Laboratory began studying the quality of ambient air in the Canal Area. Four suburban and one regional (background) air sampling stations were established and the ambient air tested following EPA methodologies for these parameters: particulate matter (hi-volume sampler), sulfur dioxide (bubbler-pararosaniline method), and nitrogen dioxide (bubbler-Arsenite method).

The suburban stations were located in the Pacific area of the Canal and the regional (background) station near Madden Dam, in an area mostly surrounded by vegetation. The stations were sampled on a time available basis for a period of approximately one month, three to four times during the year to gather a data bank. All measurements taken represented 24-hour averages. No continuous monitoring stations were established.

Table 6 lists the yearly averages obtained for each parameter at the suburban stations vs. the regional (background) station. The data shows particulate, sulfur dioxide, and nitrogen dioxide levels to be well within the EPA Primary Ambient Air Quality Standards. Occasional measurments were also made for carbon monoxide and ozone content and these contaminants were also found at levels below the EPA permissible limits.

TABLE 1.—WATER QUALITY DATA FOR GATUN LAKE PANAMA CANAL COMMISSION AREA

Parameters	1972 [1]	1975 [1]	1979 [1]
Temperature	28.0	28.1	28.1
pH, units	7.3	7.2	7.1
Fecal coli-bacteria, counts/100 ml	31	12	19
DO, mg/l	6.0	6.2	5.8
BOD (5 day) mg/l	.64	.67	.69
Turbidity NTU	2.66	3.80	3.12
Alkalinity (as mg/l $CaCO_3$)	36	36	35
Fluoride, mg/l	.051	.053	.049
Ammonia, mg/l	.02	.02	.02
Kjeldahl nitrogen, mg/l	.1	.13	.10
Nitrate-N, mg/l	.037	.039	.034
Total phosphorous, mg/l	.024	.026	.015
Arsenic, mg/l	<.010	<.010	<.010
Barium, mg/l	<.050	<.050	<.050
Cadmium, mg/l	<.010	<.010	<.010
Chromium, mg/l	<.020	<.020	<.020
Copper, mg/l	<.020	<.020	<.020
Iron, mg/l	124.6	131	138
Lead, mg/l	<.040	<.040	<.040
Lithium, mg/l	<.100	<.020	<.020
Manganese, mg/l	<.010	<.010	<.010
Mercury, mg/l	<.0004	<.0004	<.0004
Nickel, mg/l	<.020	<.020	<.020
Potassium, mg/l	<2	<2	<2
Selenium, mg/l	<.010	<.010	<.010
Silver, mg/l	<.020	<.020	<.020
Sodium, mg/l	6.2	6.1	6.2
Zinc, mg/l	<.020	<.020	<.020

[1] Data given as yearly averages of 5 representative stations in the Gatun Lake Area.

Note.—Whenever a < (less than) figure is shown, it means that levels were below the detection limit of the method used

TABLE 2.—WATER QUALITY DATA [1] FOR PANAMA CANAL COMMISSION DRINKING WATER INTAKE AREAS

Parameters	Atlantic intake			Gamboa intake			Paraiso intake		
	1971	1975	1979	1972	1975	1979	1972	1975	1979
Temperature, °C	29.0	28.9	27.8	27.8	27.9	27.0	28.2	28.2	27.2
pH, units	7.1	7.05	6.97	6.9	7.2	7.0	7.0	7.0	7.2
Fecal coli-bacteria, counts/100 ml	18	34	9	42	38	14	112	170	93
Dissolved oxygen, mg/l	6.1	6.05	6.0	4.3	4.6	5.3	5.1	5.8	5.9
BOD (5 day) mg/l	.49	.61	.41	.61	.39	.63	.55	.55	.58
Turbidity, NTU	.62	.68	.71	3.6	6.7	2.2	18.3	20.2	9.5
Alkalinity (as mg/l $CaCO_3$	38	37	44	49	49	55	49	47	50
Fluoride, mg/l	.05	.05	.05	.05	.05	.05	.05	.06	.06
Ammonia, mg/l	.050	.050	.024	.030	.030	.030	.012	.025	.030
Kjeldahl nitrogen, mg/l	.13	.11	.15	.12	.14	.11	.20	.24	.21
Nitrate-N, mg/l	.010	.012	<.010	.126	.126	.054	.212	.223	.085
Total phosphorus, mg/l	.018	.021	.018	.025	.024	.025	.019	.023	.026
Arsenic, mg/l	<.010	<.010	<.010	<.010	<.010	<.010	<.010	<.010	<.010
Barium, mg/l	<.050	<.050	<.050	<.050	<.050	<.050	<.050	<.050	<.050
Cadmium, mg/l	<.030	<.010	<.010	<.010	<.010	<.010	<.010	<.010	<.010
Chromium, mg/l	<.020	<.020	<.020	<.020	<.020	<.020	<.020	<.020	<.020
Copper, mg/l	<.020	<.020	<.020	<.020	<.020	<.020	<.020	<.020	<.020
Iron, mg/l	51	40	45	214	211	266	341	431	450
Lead, mg/l	<.040	<.040	<.020	<.020	<.040	<.040	<.040	<.040	<.005
Lithium, mg/l	<.10	<.10	<.10	<.10	<.10	<.10	<.10	<.10	<.10
Manganese, mg/l	<.010	<.010	<.010	<.010	<.010	<.010	<.010	<.010	<.010
Mercury, mg/l	<.020	<.020	<.020	<.020	<.020	<.020	<.020	<.020	<.020
Nickel, mg/l	<.020	<.020	<.020	<.020	<.020	<.020	<.020	<.020	<.020
Potassium, mg/l	<.020	<.020	<.020	<.020	<.020	<.020	<.020	<.020	<.020

TABLE 2.—WATER QUALITY DATA [1] FOR PANAMA CANAL COMMISSION DRINKING WATER INTAKE AREAS—Continued

Parameters	Atlantic intake			Gamboa intake			Paraiso intake		
	1971	1975	1979	1972	1975	1979	1972	1975	1979
Selinium, mg/l	<.010	<.010	<.010	<.010	<.010	<.010	<.010	<.010	<.010
Silver, mg/l	<.020	<.020	<.020	<.020	<.020	<.020	<.020	<.020	<.020
Sodium, mg/l	5.08	5.6	5.7	7.5	7.1	7.3	7.4	7.1	7.4
Zinc, mg/l	<.020	<.020	<.020	<.020	<.020	<.020	<.020	<.020	<.020

[1] Data given as yearly averages of representative stations in each area.

TABLE 3.—WATER QUALITY DATA FOR LIMON BAY

Parameter	Limon Bay; west side			Limon Bay: east side		
	1972	1975	1979	1972	1975	1979
pH, units	8.5	8.4	8.5	8.2	8.4	8.5
DO, mg/l	6.4	6.2	6.0	6.4	6.5	5.9
BOD (95 day) mg/l	.56	.53	.56	.70	.87	1.04
Fecal coliform-bacteria (counts/100 ml)	24	5	4	249	94	120
Kjeldahl nitrogen, mg/l	.18	.10	<.10	.18	.11	<.10
Ammonia, mg/l	.034	.025	.025	.041	.029	.031
Total phosphorous, mg/l	.033	.019	.008	.036	.023	.011
Turbidity, NTU	1.44	1.26	.66	.52	.75	.49

TABLE 4.—WATER QUALITY DATA FOR BALBOA HARBOR AND PANAMA BAY

Parameter	Marine waters north of Thatcher Ferry Bridge			Marine waters south of Thatcher Ferry Bridge		
	1972	1975	1979	1972	1975	1979
pH, units	7.4	7.3	7.4	7.7	7.7	7.7
DO, mg/1	5.15	4.7	5.8	6.3	6.3	6.2
BLD (5-day) mg/l	.83	.81	.76	.79	.83	68
Fecal coliform-bacteria (counts/100 ml)	700	393	578	41	74	53
Kjeldahl nitrogen, mg/l	.34	.18	.14	.16	.17	.13
Ammonia, mg/l	.060	.080	.060	.027	.023	.035
Total phosphorus, mg/l	.062	.052	.027	.039	.039	.039
Tubidity, NTU	2.60	2.57	5.45	2.18	1.95	1.90

TABLE 5.—QUALITY OF DRINKING WATER PRODUCED BY PANAMA CANAL COMMISSION'S WATER TREATMENT PLANTS

	EPA maximum standard (mg/l)	Mount Hope drinking water (mg/l)	Miraflores drinlung water (mg/l)
A. Inorganic contaminants:			
Arsenic	0.05	<0.01	<0.01
Barium	1	<.05	<.05
Cadmium	.010	<.0005	<.0005
Chromium	.05	<.005	<.005
Lead	.05	<.005	<.005
Mercury	.002	<.001	<.001
Nitrate (as N)	10	<.005	<.005
Selenium	.01	<.005	<.005
Silver	.05	<.0005	<.0005
B. Fluoride temperature range:26.3 to 32.5	1.4	.68	.66

TABLE 5.—QUALITY OF DRINKING WATER PRODUCED BY PANAMA CANAL COMMISSION'S WATER TREATMENT PLANTS—Continued

	EPA maximum standard (mg/l)	Mount Hope drinking water (mg/l)	Miraflores drinking water (mg/l)
C. Organic contaminants:			
Chlorinated hydrocarbons:			
Endrin	.0002	<.00004	<.00004
Lindane	.004	<.00001	<.00001
Methoxychlor	.1	<.00005	<.00005
Toxaphene	.005	<.00005	<.00005
Chlorophenoxys:			
2,4-D	.1	<.0006	<.0006
2,4,5-TP Silvex	.01	<.0006	<.0006

D. TURBIDITY

Maximum contaminant level permissible is 1 turbidity unit as determine by a monthly average:

Mount Hope drinking water averages <.15 TU.

Miraflores drinking water averages <.35 TU.

E. MICROBIOLOGICAL CONTAMINANT

EPA drinking water regulations allow not more than 10 percent (in any month) of the 10 ml fermentation tube portions to contain coliform bacteria present:

Mount Hope drinking water averages <1 percent.

Miraflores drinking water averages <1 percent.

F. RADIOACTIVITY AND RADIONUCLIDE CONTAMINANTS

There are no present facilities avilable to conduct these tests. Occasional samples sent to stateside laboratories shows the levels to be well within the drinking water regulation requirements.

TABLE 6.—AIR QUALITY DATA[1] FOR PANAMA CANAL COMMISSION AREAS

Sampling Stations	Suspended particulates [2]			Sulfur dioxide [3]			Nitrogen dioxide [4]		
	1977	1978	1979	1977	1978	1979	1977	1978	1979
Miraflores	38.98	33.60	37.50	12.67	11.49	10.21	21.33	23.08	20.16
Pedro Miguel	44.99	35.87	40.72	7.57	13.69	11.80	27.30	29.11	30.55
Balboa	56.08	48.40	51.24	12.69	19.53	14.21	49.11	45.87	46.32
Madden	55.81	49.31	50.82	5.80	11.42	8.0	16.14	17.75	15.71

[1] 90 percent of the data has been screened and processed.

[2] EPA, primary air quality standard for suspended particulates: 75 $\mu g/m^3$ annual geometric mean.

[3] EPA, primary air quality standard for sulfur dioxide: 80 $\mu g/m^3$ annual arithmetic mean.

[4] EPA, primary air quality standard for nitrogen dioxide: 100 $\mu g/m^3$ annual arithmetic mean.

Note: All data given in micrograms per cubic meter ($\mu g/m^3$).

Mr. **Hubbard**. Regarding pest and mosquito control, the sixth category of major concern which you mentioned.

Under the new treaty and Panama Canal Act, what responsibilities for the important mosquito control program does Panama have, and what responsibility does the United States have?

Mr. **Constant**. Sir, the responsibilities are delineated based upon the areas over which we have control. We operate within the canal operating area and the housing areas. We work jointly with Panama Commission's mosquito control teams, and we work with them just outside the limits of housing areas for Commission personnel. We work with them jointly in those areas, but inside the areas, we work ourselves. Outside of the area, with the exception of those joint teams, it is Panama's responsibility.

Mr. HUBBARD. Has the Commission experienced any recent problems with respect to the effectiveness of the mosquito control program?

Mr. CONSTANT. No, sir; not to my knowledge. We have not had any problems recently.

Mr. HUBBARD. Regarding disposal of dredge material, where are the sites for disposal of dredge material in the canal operating areas?

Mr. CONSTANT. We have a number of them in the channel areas before going up the locks and into the lake. We have an area on the Pacific side which is near Rodman Naval Station—and on the Atlantic side, the disposal area is on Telfer's Island. In the lake istelf, much of the dredged material is dumped into the former valleys that were in that area prior to the creation of the lake.

You realize there were hills and valleys in that entire area and much of the dredged material is dumped into those valley areas, and we have had no problem with that.

Mr. HUBBARD. What are the Commission's guidelines for the fixing of the location of such sites?

Mr. CONSTANT. Well, we have been expanding these areas for some time in order to create as much spoil area as we possibly could, and we do not intend to expand them any further other than increasing the height of the dike area that protects this material from flowing back into the canal. We feel that that is sufficient area at the present time and for the foreseeable future to take care of our dredged materials.

Mr. HUBBARD. Tom, have the dredge disposal sites been of any environmental concern to either Panamanian or U.S. citizens who live within the vicinity of these sites?

Mr. CONSTANT. No, sir; there have been no problems there at all. They are monitored very closely by our teams and we have found no concern over the environmental problems affected by the dredged material.

Mr. HUBBARD. Regarding the Joint Commission on the Environment, on page 4 of your statement you indicate that: "The environmental/energy coordinator for the Commission is a member of an interim ad hoc technical secretariat, organized to provide technical support for the Joint Commission on the Environment."

Would you please elaborate on what type of coordination you expect the Commission to have with the Joint Commission on the Environment when that body is organized?

Mr. CONSTANT. The individual we are referring to there is Dr. Frank Morris, who has been our environmental officer for several years. He will act as the Commission's representative to provide source material to the Joint Commission on the Environment. We will not have a member on the Commission, but we will be providing the secretariat and the Commission with material upon which they can base their recommendations to the respective governments.

It will be a continuing process. When we find that there may be a problem, we would bring it to the attention of the Joint Commission.

Mr. HUBBARD. Regarding oil pollution—and I am nearing the conclusion of my questions—on page 5 of your statement, you indicate that: "Panama's newly formed Oil Pollution Department has a limited oil recovery system for pier area use."

Do you feel that Panama's Oil Department is adequate to recover from any oil accidents arising in the port areas now under Panama's jurisdiction?

Mr. CONSTANT. No, sir; we do not. The Government of Panama realizes that they do not have the capability at the present time.

Panama borrows equipment from a private concern when there is ever any oilspill in the port area, or they have been asking for our assistance and we have been very happy to provide it.

Mr. HUBBARD. Regarding draft limitations, the OTA study indicated that in the past, draft limitations due to water shortages have occasionally been imposed on ships transiting the canal. The most severe limitation occurred in May 1977, when the maximum permissible draft was 35.6 feet. The maximum transit draft at that time could have been 39.6 feet.

Recently, we were informed by Administrator McAuliffe during the authorization hearings, of a significant increase in ships transiting the canal.

Now that the ships are larger, do you anticipate draft limitations due to water shortages which will now have an even greater impact on canal finances?

Mr. CONSTANT. Not necessarily, sir.

The draft limitations are placed, based upon the adequacy of rainfall and the amount of water contained in both Madden Lake and Gatun Lakes. It is not dependent upon siltation in the channel. So what we are talking about is adequacy of rainfall and the limitation, the severe limitation, that was placed at that particular time, as you mentioned, was based upon a very dry season.

We do not foresee any major limitations. We will continue with our maintenance dredging in the channels and we do not see any limitation on drafts, other than those caused by rain shortages.

Mr. HUBBARD. The last subject on which I have questions regards sanitation measures.

On page 5 of your statement, you indicate that a sanitation unit is retained by the Commission to carry out a community-Commission sanitation program enforcing such measures as refuse collection and disposal.

Where is the Commission enforcing these measures?

Mr. CONSTANT. Sir, we are not actually enforcing them other than in our own canal areas. We are monitoring the collection of garbage by Panamanian agencies. Where we feel that there might be a sanitation problem, we bring it to the attention of the Panamanian authorities. This has happened in a couple of minor instances and it has been corrected immediately.

We, our teams, do monitor also within the housing areas, the family housing areas that we mentioned previously.

Mr. HUBBARD. How does this program relate to Panama's responsibilities of garbage collection in the canal area?

Mr. CONSTANT. Well, as I mentioned, sir, the relationship is that our teams will monitor the work being performed by the Panamanian agencies responsible for the collection of garbage and where there are possible health difficulties we report it to the Panamanian authorities.

Mr. HUBBARD. Congressman Bauman?

Mr. BAUMAN. Tom, the Joint Commission has not met yet, and I think that is regrettable. I think the whole pace of the administration's implementation of our side of the Panama Canal Treaties is highly regrettable. It has already given rise to a number of problems outside of the issue of the environment. One question I have for you is, has there been any discussion with Panamanian officials about the impact of a second canal? Certainly, environmentally, this would have a major impact, particularly with its proposed location.

I notice that the Japanese have visited Panama to study this matter, and President Royo is slated to go to Japan to discuss a new canal, if he has not already done so.

The money is obviously a major barrier in building a second canal, but it seems that the environmental aspects and related issues ought to be talked about with the Commission and its staff.

Do you know of any discussion that is going on?

Mr. CONSTANT. No, Congressman Bauman. We have had no official discussions with the Panamanian Government on their plans for a sea-level canal. That, of course, is covered in the terms of the treaty.

At a certain point, they will have discussions, I am sure, but none to my knowledge have taken place, and certainly the Commission has not been involved in any.

Mr. BAUMAN. I would hope that when the Joint Commission does finally organize that that would be one of the first issues that is raised with our Panamanian counterparts so that the environmental impact alone of such a suggestion could be considered, because all the testimony that I have ever heard in the last 2 years that I have served on this subcommittee indicates that the impact on the environment would be the major roadblock, second only to financial hurdles, if such a thing was ever to come about.

Mr. CONSTANT. I am sure that that is the case; yes, sir.

Mr. BAUMAN. Thank you.

Mr. HUBBARD. Mr. Modglin, any questions?

Mr. MODGLIN. No questions.

Mr. HUBBARD. I believe that is all, Tom.

We appreciate so much your helpful testimony and also we appreciate your answers to our several questions.

The key project designed to curb the reforestation of the Panama Canal watershed has been initiated under the auspices of the U.S. Agency for International Development in connection with the appropriate agencies of the Panama Canal Government.

Since the reforestation efforts may be vital to the canal in the years ahead, we have asked AID to brief us this morning on the project status for the future.

Here to present testimony is Mr. Aldelmo Ruiz, AID Mission Director in Panama.

Prior to assuming his post in mid-1979, Mr. Ruiz was a Mission Director in El Salvadore, and before that Yemen. He joined AID in 1962. His background is in engineering and he was born on the island of Puerto Rico.

Mr. Ruiz, we do welcome your testimony and appreciate your being here this morning and recognize you as an authority on your presentation.

STATEMENT OF ALDELMO RUIZ, DIRECTOR OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT MISSION IN PANAMA

Mr. **RUIZ.** Thank you, Mr. Chairman.

Mr. Chairman and members of the Panama Canal Subcommittee, I am pleased to be here today to testify on the subject of environmental protection measures in Panama.

In Panama, as in other countries of Central America and the developing world, the disastrous effects of widespread and uncontrolled deforestation were only recently recognized. At the turn of the century, most of the deforestation in Panama was caused by systematic and large-scale commercial lumbering operations. More recently, it has been caused by the ever-increasing number of human incursions into formerly inaccessible virgin forest areas.

Most of the damage is being caused by migratory subsistence farmers who clear forest land and plant one or two crops before moving to another location where the same process is repeated.

While overall statistics for Panama are not available, it is estimated that between 1952 and 1978, the amount of land in the Panama Canal watershed containing forest cover declined from 83 percent to 32 percent as a result of slash and burn practices. At current rates of destruction, the remaining primary forest in the watershed will all but disappear by the year 2000. It is generally acknowledged that the rate of deforestation in other areas of Panama is substantially more severe. In fact, many of the inhabited areas of Panama's Pacific slope are almost completely denuded. We are hopeful that as a result of current and proposed government action, this vital resource will not be permanently lost to future generations.

As we so graphically learned from the massive human suffering in the African Sahel region not too long ago, the problems of deforestation, when combined with other natural disasters such as drought, can rapidly escalate into a major catastrophe for large numbers of people.

On a worldwide basis, the loss of tropical forests has become alarming. In Latin America, one-third of the tropical forests have been lost, and in Africa and Asia, the percentage has reached 50 to 70 percent respectively.

Over the past decade, the Panamanian Government has become acutely aware of the critical and unique role that forest cover and watersheds play in maintaining the equilibrium of the environment and in insuring economic and human progress.

The recently concluded Panama Canal Treaties did much to alert the Government and the general public of the vital link that exists between the maintenance and restoration of forests and watersheds and such factors as flood and erosion control, freshwater storage for human consumption, irrigation and hydroelectricity, providing sanctuaries for numerous endangered species of plant and animal life, and the operation of the Panama Canal.

The magnitude of the problem becomes abundantly clear when one realizes that the transit of but a single oceangoing ship through the canal requires more than 52 million gallons of freshwater. This is roughly equivalent to the daily requirements of a medium-sized city. When one considers that there are 38 such transits during the average 24-hour period, one can begin to realize how important proper watershed management practices are to the economic well being of Panama.

Draft reduction of vessels transiting the canal toward the end of the dry season are usually required in years of below-normal rainfall. Two years of low rainfall in 1976 and 1977 caused the lowest level of record in Lake Gatun.

In May 1977, it reached 80.5 feet, causing a draft reduction of 3.1 feet. A more serious longrun problem, however, is the progressive loss of storage by sedimentation of the reservoirs, especially Lake Alajuela, due to excessive erosion within the watershed.

It is estimated that, if present land-use trends continue, Lake Alajuela, a primary water control and water facility serving the canal, will have lost 22 percent of its storage capacity by the year 2000, and that it will become useless for water storage sometime before the year 2050.

From an ecological and environmental point of view, the Panama Canal watershed represents what many consider to be one of the most extensive and economically critical humid tropical forests in all of Central America. According to the most recent Smithsonian Tropical Research Institute publication, the region harbors over 1,300 species of vascular plants and is the home of 562 of the 642 species of birds which are known to inhabit North America.

In addition to being the habitat of numerous other species of mammals, the area also serves as a sanctuary for 63 percent of the animal species protected by the Panamanian game laws and 20 percent of the mammals listed in the U.S. Endangered Species Act. The continued preservation of the canal's watershed is indispensible if this rich and varied collection of plant and wildlife are to be protected.

In terms of economic and human development implications, the major Panamanian watersheds including that on the Panama Canal provide potable water for over 900,000 Panamanian citizens and are the major source of the freshwater utilized for irrigation by sugar and banana plantations which account for a major share of the country's export crops, as well as significant employment opportunities.

The watersheds also prevent the silting and sedimentation of rivers, streams, and the canal, which is the country's single largest source of revenue. Unless current rates of silting and sedimentation can be reduced, this vital waterway may no longer be fully serviceable when it is finally transferred to Panama at the end of 1999.

The situation is equally critical for Panama's hydroelectric power-generating capacity. With the skyrocketing price of fossil fuels, any reduction in generating capacity due to silting or water shortages would create major problems for the economy.

In a major expression of concern and an awareness of the limited institutional and financial resources available for dealing with this problem, the Government of Panama requested assistance from AID in early 1978. During the ensuing year, some rather detailed studies and analyses were conducted in preparation for the signature of a $10 million AID loan agreement early in 1979. The loan is designed to: (1) Strengthen the technical, managerial, and administrative capabilities of the Panamanian institution responsible for the management of renewable natural resources; (2) increase awareness among all segments of the Government and the general population of the importance of natural resource conservation; and (3) establish watershed management programs in the Panama Canal and two other priority watersheds in western and southern Panama and involve the local population in the resource management and conservation progress. These activities are designed to establish a rational and sustainable natural resource use and protection program.

These goals are admittedly formidable, given the historical, cultural, and attitudinal constraints which will have to be overcome. While the obstacles are great, so are the potential rewards.

If the process of degradation can be slowed and, perhaps, even reversed, we will not only have assisted Panama with this pressing problem, but may also have developed a replicable methodology applicable to other parts of the world as well.

Although implementation of the project began only 8 months ago, some measurable achievements have been obtained. The Panamanian Directorate of Natural and Renewable Resources now has in place a group of trained professionals capable of managing the varied activities to be carried out under this program.

Startup activities included establishing a complete tree and pasture nursery system capable of producing an estimated 2 million trees per year when in full production, which should be within 1 year.

During the first planting season, 700 hectares of permanent tree crops was established. In the field of resource protection, the project employed, trained, and placed in the field 50 forest and park rangers. Also, during the first portion of the project, a series of radio and TV informational activities were conducted. The net effect of these activities is an increased awareness on the part of the local population of the importance of natural resource restoration and protection. Almost every community in the Panama Canal watershed is involved in some way in a watershed management activity.

Conducting this project will produce an experienced Panamanian natural resource agency capable of conducting an effective ongoing resource use and protection program.

During the life of the project, a series of interrelated field activities will be carried out. We anticipate establishing within the canal watershed 10,000 hectares of forested land, a series of soil erosion control systems, improved pasture on a major portion of the 85,000 hectares of unimproved, rapidly degrading pastureland, and a system of protection for the 93,000 hectares of remaining primary forest.

We also expect to have a local population acutely aware of the problems of soil erosion and the consequences of destructive land and water management, and aware of their role in protecting the critical natural resource base.

During the first year of project implementation, we have been encouraged by the degree of Government and community commitment to this significant development effort and are looking forward to measurable progress over coming years.

This, Mr. Chairman, completes my prepared statement.

I will be pleased to respond to any questions that you or other members of the committee may have.

Mr. HUBBARD. Thank you very much, Mr. Aldelmo Ruiz, the Panama AID Mission Director, AID standing for Agency for International Development. We appreciate your testimony.

Regarding the threat to canal operations presented by deforestation, Mr. Ruiz, the earlier part of your statement concerning the deforestation of the Panama Canal watershed includes some statements that are somewhat surprising, particularly the statement on the top of page 4 where you say that: "This vital waterway may no longer be fully serviceable when it is finally transferred to Panama in 1999."

Do you see where you said that?

Mr. RUIZ. Yes, Mr. Chairman.

Mr. HUBBARD [reading]. "This vital waterway may no longer be serviceable when it is finally transferred to Panama in 1999."

Mr. RUIZ. Yes, sir.

Mr. HUBBARD. I am glad that you have warned us of this danger, because it is certainly in the U.S. interest that the canal be capable of handling U.S. trade and world trade both before and after the year 2000.

In light of your statement, would you care to elaborate upon your own reaction upon learning of the situation in Panama concerning the deforestation of the watershed, or is your conclusion one at which you arrived over a period of time?

Mr. RUIZ. According to the most recent estimates, by 1978 the sedimentation rate of the canal watershed had reached approximately 9 million cubic meters (m^3) per year. This rate is expected to increase to 11.5 million m^3 by 1983 and 16 million m^3 by the year 2000, unless effective remedial measures are adopted.

The joint AID/Government of Panama (GOP) watershed management project is designed to stabilize the sedimentation rate at approximately 7.9 million m^3 per year. If this goal is achieved, the overall rate of sedimentation will be reduced by approximately 8.1 million m^3 in the year 2000. This would contribute measurably to the expected life of the canal. To illustrate the severity of the deforestation problem, I would like to draw your attention to a number of charts which I have brought with me.

The first illustration depicts the canal watershed in 1952 when it was completely forested.

The second illustration depicts the canal watershed as it appeared in 1978. Please note that it was almost completely deforested except for the former Canal Zone which was still relatively intact.

My own reaction to the situation was to support and encourage a concerted effort by the Government of Panama and other international donors to cope with this serious problem. Since AID staff have been concerned with the human and economic implications of deforestation for some years, we took the initiative to develop a pilot project which we hope can be replicated in other parts of the developing world.

Mr. HUBBARD. Does that complete your answer?

Mr. RUIZ. Yes; Mr. Chairman.

Mr. HUBBARD. Let me ask you regarding the terms of the loan. Would you elaborate upon the terms of the $10 million loan under which the canal watershed project is being carried out? Has the loan been fully funded through appropriations?

Mr. RUIZ. The loan was a total of $10 million, and it fully funded. In addition, the GOP will have a counterpart financing funding by the amount of $6.8 million. So the total amount available for the project will be $16.8 million.

As for the terms of the loan it is a 20-year loan with a 10-year grace period payable as follows: 2 percent for the first 10 years, 3 percent for the succeeding 10 years.

Mr. HUBBARD. What amount of the loan has been disbursed thus far?

Mr. RUIZ. As of to date about $900,000 have been spent, of which $300,000 have been disbursed.

Mr. HUBBARD. How long will the terms of this loan be in effect?

Mr. RUIZ. Well, sir, do you mean the project?

The loan is for a 20-year period with a 10-year grace period.

Mr. HUBBARD. For how many years will the project be ongoing?

Mr. RUIZ. Five-year project.

Mr. HUBBARD. Five years?

Mr. RUIZ. Five years. It will go on until 1983.

Mr. HUBBARD. Well, then, over how many years will the loan be repaid?

Mr. RUIZ. It will be repaid in 20 years, with a 10-year grace period. This total 30 years.

Mr. HUBBARD. All right.

Are there any particular problems at present with the execution of the loan?

Mr. RUIZ. No, sir, at the present, we have not encountered any difficulties with the execution of the loan.

Mr. HUBBARD. I have a question regarding stopping the return of slash-and-burn farmers, as you indicate on page 5 of your statement. In the early part of the watershed project, there is an emphasis on production and planting of trees in order to forest as many hectares of land in the watershed as possible. You also indicate the project will provide improved pasture on 85,000 hectares of unimproved pastureland. Once the planting of trees is done, and the pasture improved, how do you stop the slash-and-burn Panamanian farmer from coming in and destroying the trees and the pasture and making the project a waste of money?

Mr. RUIZ. The present approach being employed by the GOP through the implementing agency—the Panamanian Directorate of Natural and Renewable Resources RENARE is by providing employment to the farmers that are living in the watershed area. Those farmers as of now are working in the reforestation program and have discontinued their slash-and-burn practices. Regarding new farmers moving into the area, I have been told by the technicians actively engaged in this project, that so far the Government has been sucessful in preventing additional farmers from moving into the area. I understand that the control is very strict—this being carried out by the forest rangers.

Further, I must point out that in the long run reforestation is a permanent undertaking and it is planned by RENARE to permanently employ farmers in the watershed area in the reforestation program.

Mr. HUBBARD. How many forest and park rangers do you estimate will have to be hired by Panama to watch over the watershed area?

Mr. RUIZ. How many?

Mr. HUBBARD. How many forest and park rangers do you estimate will have to be hired by Panama to watch over the watershed area?

Mr. RUIZ. As of to-date RENARE has employed about 800 people of which approximately 700 are daily laborers—farmers— engaged in manual work; 50 are engaged in administrative and clerical work the remaining 50 are forest rangers. To the best of my knowledge the total forest rangers within the project will remain around 50.

Mr. HUBBARD. I apologize. I did not catch that.

Mr. RUIZ. The organization for the project—RENARE—now employs approximately 800 people under the watershed management project. Of the 800 people, 700 people are workmen, employed in planting trees and nurseries in addition to the cleaning and other menial work. Approximately 50 people are administrative and clerical staff and the other 50 are forest rangers.

Mr. HUBBARD. Regarding the Joint Commission on the Environment, once the Joint Commission on the Environment becomes an active body overseeing the implementation of the Panama Canal Treaty, what type of role does your agency plan to have with that body?

Mr. RUIZ. Well, our role with that Agency will be minor, maybe a coordinating role. This is because our main role is to work in collaboration with the Panamanians in strengthening the institution that eventually will be carrying out the important work of watershed management.

Mr. HUBBARD. Regarding the continuation of the reforestation programs, after the 5-year AID reforestation project in Panama is completed, do you feel the Panamanian Government will be able to continue the reforestation projects at the necessary level in order to protect the viable operation of the canal?

Mr. RUIZ. I feel that they will do so. At present Panamanian officials becoming increasingly aware of this mammoth problem, which if it is not coped with will be highly detrimental to their overall economic development. I must point out that other international organizations are providing technical assistance in this area of watershed management. For example, FAO now has, I have been informed, four technicians working with RENARE in this area.

As I have stated I think that the Panamanians will be able to carry on the task of watershed management. However, I believe, we need to observe closely their performance during the period that the project is developing to see how their performance is going to be.

Mr. **Hubbard**. Last, my last question is one regarding squatters in the Panama Canal area.

Can you elaborate on what specific action is being taken by Panama right now with respect to these migratory subsistence farmers who appear to be causing most of the damage to the existing forests in Panama?

Mr. **Ruiz**. As I stated previously, the organization responsible for watershed management—RENARE—have employed farmers living in the watershed area to work in the project. So far this appears to be successful. This is mainly because such employment provide the farmer with adequate living which prevents them from continuing to damage the forest.

As far as we know there are no new migratory subsistence farmers moving into the area. I understand that the Government of Panama has been very successful in keeping them away. AID will keep observing the Government success in this area.

Mr. **Hubbard**. Congressman Livingston?

Mr. **Livingston**. No questions.

Mr. **Hubbard**. Any questions from Terry Modglin or Merrill Whitman or Mr. Luna? I believe we have no questions, Mr. Ruiz. Do you have any additional comments that you wish to make?

Mr. **Ruiz**. Yes, Mr. Chairman.

I would like to make a few comments about the serious situation that exists at present in Panama concerning the deforestation of the tropical forests. As an example, as the construction of the Inter-American Highway progresses toward the Columbian border the subsistance farmers keep destroying the forests on both sides of the highway. This is occurring at a rapid rate. The need for measures, such as rules and regulations need to emanate from the Panamanian central government to protect their virgin forests. AID will continue collaborating and working with the Panamanian Government in reaching this important goal.

Mr. **Hubbard**. Thank you very much, Dr. Ruiz.

Before you go, on March 6 of this year, Ambler Moss, Jr., the American Ambassador, our Ambassador to Panama, located at the Embassy of the United States in Panama, wrote me a letter. It is addressed to me and I read:

> Dear Mr. Chairman:
>
> I am writing you this note to introduce Dr. Aldelmo Ruiz, Director of the AID Mission in Panama, who will be testifying before your Subcommittee on the subject of environmental protection measures in Panama. Dr. Ruiz is a seasoned veteran of development programs in Latin America and a person with a creative mind and plenty of initiative. I know that you will enjoy meeting him.

We are so glad to have you, and you are very highly recommended by Ambler Moss, Mr. Ruiz.

In 1967, Dr. Ruiz, when I was running for the State Senate, my first attempt at elected office, I referred to my 67-year-old opponent as a seasoned politician. I believe Ambassador Moss, when he refers to you as a seasoned veteran of programs in Latin America, is giving you a high compliment and he refers to you as a person with a creative mind and plenty of initiative. Coming from Ambler Moss, for whom I have much admiration, that is a compliment to you of which you can be very proud. Certainly I hope to know you better and we appreciate very much your coming here today to testify before us.

Your testimony is very helpful and your answers to our questions are very helpful and we express our appreciation to you.

Mr. **Ruiz.** Thank you, Mr. Chairman.

Mr. **Hubbard.** Good.

Our final witness is William Alston Hayne, Deputy Assistant Secretary for Environmental, Health and Natural Resources, Department of State.

Mr. Hayne is one of three U.S. citizens who was appointed by the President on January 7 to membership on the Joint Commission on the Environment.

Mr. Hayne is appearing here today to brief us on the role that the Joint Commission will play in attempting to resolve the environmental problems that now exist and are likely to exist in the canal area.

Mr. Hayne, we are lucky to have someone with your background representing the United States. We understand you headed the U.S. delegation to numerous conferences on environmental matters; and we also recognize that you have served in economic positions with the Foreign Service of the State Department, and that you have also served on detail to the Council of Environmental Quality.

The subcommittee welcomes you today and, speaking for the subcommittee, I hope that, beginning today, we will have an active dialog with you and other Joint Commission members.

Now, we await your comments, Mr. Hayne.

STATEMENT OF HON. WILLIAM ALSTON HAYNE, DEPUTY ASSISTANT SECRETARY FOR ENVIRONMENTAL, HEALTH AND NATURAL RESOURCES, DEPARTMENT OF STATE

Mr. **Hayne.** Thank you, Mr. Chairman.

I am glad you got me confused with somebody of importance in your State. It has happened before.

In addition to myself, as you know, President Carter has designated Charles R. Ford and Robert O. Blake to serve as Commissioners. Mr. Ford is Executive Assistant and Staff Director to the Administrator of the Environmental Protection Agency. He previously served as Deputy, then Acting, Assistant Secretary of the Army for Civil Works, the office whose responsibilities include environmental matters and the operation of the Panama Canal.

Ambassador Blake is a retired Foreign Service officer who is active in environmental activities. During the Senate debate on the Panama Canal treaties and congressional enactment of implementing legislation, he chaired the Panama Canal Environmental Task Force, a coalition of environmental groups which supported the Treaties.

The U.S. Commissioners have met in Washington, and we are preparing now to meet with our Panamanian counterparts in Panama next month. The Department of State officer, Mr. William Mansfield, who is with me today, and who will provide staff support in the Commission, visited Panama last week.

I would like to add to my statement that when we were appointed in January, the Joint Commission was prepared to meet immediately but we were asked not to get too far ahead of the principal

Panama Commission. Even now there are problems for Panama with respect to meeting promptly with us.

We hope to go to Panama next month, accompanied by Mr. Mansfield, where we will expect to inform ourselves about relevant environmental conditions, as well as making contact with our Panamanian counterparts and Panamanian officials as we initiate work on the programs and procedures.

We recognize that the Joint Commission on Environment is a unique institution. There are few comparable organizations from which we can draw experience.

Our basic mandate of course comes from article VI of the Panama Canal Treaty itself. Further details are provided by the exchange of notes on October 1, 1979, between our Ambassador in Panama and the Panamanian Minister of Foreign Relations. The texts of these notes are attached as an annex to my statement.

[The following was received for the record:]

PANAMA, *October 1, 1980.*

HIS EXCELLENCY, CARLOS OZORES T.,
Minister of Foreign Relations,
Panama.

EXCELLENCY: "I have the honor to refer to your Note of today's date concerning the Joint Commission on the Environment, which reads:

"MR. AMBASSADOR: I have the honor to address Your Excellency in reference to paragraph 2 of Article VI of the Panama Canal Treaty signed September 7, 1977 and to recent discussions between representatives of our two Governments relating to the establishment and functions of the Joint Commission on the Environment.

"In particular, I am pleased to propose the following:

"The Joint Commission on the Environment is established as of October 1, 1979.

"The Joint Commission is composed of three representatives of each Government who shall serve for periods of three years each.

"Management of the work of the Commission will be the concern of a combined Presidency, one of whom will serve as Chairman for a term of two years. By Laws of the Commission will determine the way in which the Chairmanship will rotate and also the exercise of the functions of the combined Presidency and the Chairmanship.

"As provided in Paragraph 2 of Article VI of the Treaty, the principal objective of the Joint Commission on the Environment is to recommend to the Governments of the Republic of Panama and the United States of America ways to avoid, or should this not be possible, to mitigate the adverse environmental impacts which might result from their respective actions pursuant to the implementation of the Treaty. The functions of the Joint Commission on the Environment are as follows:

"1. To receive from the Governments of the Republic of Panama and of the United States of America complete information on any action taken in accordance with the Treaty which, in the judgment of both Governments, might have a significant effect on the environment.

"2. To recommend means to avoid or mitigate the adverse effects on the environment of the Republic of Panama resulting from implementation of the Treaty.

"3. To review periodically anti-pollution actions recommended by the Commission and the ecological protection and preservation activities carried out by the two Governments in relation to implementation of the Treaty.

"4. To advise both Governments regarding the strategy and policy of environmental protection related to implementation of the Treaty.

"5. To work closely with official organizations of the Republic of Panama and of the United States of America carrying out duties related to the protection of the environment in the area of the Canal and to obtain continuous and timely information about activities of international and private organizations working to the same purpose.

"6. To consult regularly with other bi-national mechanisms of coordination established for the implementation of the Treaty, especially with the Coordinating Committee, the Joint Committee, and the Consultative Committee, with the purpose of obtaining information from both Governments about the activities provided for in the Treaty which could have a significant effect on the environment.

"7. To study methods to obtain effective environmental protection and the prevention of pollution which could be caused by implementation of the Treaty, especially in regard to land and water areas, air, flora, fauna, and to the social and economic repercussions thereof.

"8. To recommend the adoption and application of measures to protect and control the contamination of land and water areas, flora, fauna, and air from physical, chemical and biological contaminants which could result from implementation of the Treaty.

"9. To recommend the kinds of environmental studies that may be necessary pursuant to Article XII of the Treaty.

"Recommendations of the Commission will be made by consensus and will be submitted to the Minister of Foreign Relations of the Republic of Panama and to the Secretary of State of the United States of America. The Commission's recommendations will be based on the best professional and objective judgments and sound ecological practices as well as such factors as costs, resource requirements and other policies relating to canal operations.

"The Commission shall be assisted in its work by a Secretariat which will have the following responsibilities:

"1. To monitor action taken respecting the recommendations made by the Commission.

"2. To prepare all necessary documentation for the work of the Commission.

"3. To prepare on instruction of the Commission necessary terms of reference for studies and surveys on the environmental consequences of any action carried out by virtue of the Treaty which might have significance effects on the environment.

"4. To formulate recommendations and evaluations for technical proposals for the contracting of professional services relating to the environment.

"5. To advise and make suggestions to the Commission about actions for the protection of the environment of Panama relating to implementation of the Treaty.

"6. To maintain liaison and necessary coordination with relevant United States Government agencies, Government of Panama agencies and binational entities created by the Treaty.

"The Governments of the Republic of Panama and of the United States of America will provide subject to the availability of funds for the necessary facilities and resources to establish the Commission and for operation of the Secretariat. The Republic of Panama will discharge its responsibilities through the Panama Canal Authority and other relevant Panamanian Government agencies and the United States will discharge its responsibilities through the Department of State, and other relevant United States Government agencies.

"I propose to Your Excellency, that this Note and your response hereto indicating acceptance shall constitute an agreement between both countries.

"I take this occasion to renew to Your Excellency the assurances of my highest consideration."

CARLOS OZORES T.,
Minister of Foreign Relations.

I have the honor to confirm the foregoing arrangements on behalf of my Government, and to confirm that Your Excellency's Note and this Note shall constitute an agreement between our two Governments concerning this matter, which will enter into force on October 1, 1979.

Mr. HAYNE. While I do not wish to repeat in detail the content of either the treaty article or the diplomatic notes, some mention of the way our work is being directed is probably in order.

Our principal objective is to recommend to the governments of the Republic of Panama and of the United States of America ways to avoid, or should this not be possible, to mitigate the adverse environmental impacts which might result from their respective actions pursuant to the implementation of the treaty.

General functions of the Joint Commission are spelled out in some nine points in the exchange of notes as well as some general guidance on how the Joint Commission should operate. While this is helpful, much yet remains to be decided concerning the specific ways by which we must accomplish our task.

In preparing for our visit, we are assisted by considerable material and expertise available in Washington. The Department of State's environmental impact statement identified some key environmental concerns related to the treaty implementation. These considerations are also discussed in the valuable working paper of December 15, 1978, entitled "Environmental Issues Affecting the Panama Canal," prepared by the Office of Technology Assessment for this subcommittee. I have read those documents with great interest. We have also been in touch with AID, the Smithsonian and with nongovernmental organizations knowledgeable about environmental conditions in Panama. We have scheduled further visits with their representatives in Panama.

While I do not wish to anticipate the nature of the problems, it is clear that strong priority must be given to the protection of the tropical forests and wildlife which could be destroyed by agricultural practices unless conservation and protection measures are taken.

The Panama forest watershed is a great sponge which holds the rainwaters that are essential to the canal's operation. The animal and plantlife of this forest is an important natural resource. Likewise, adequate sanitation in the area is important to prevent the spread of tropical disease; oil spills, water and air pollution must be guarded against.

The question of a third lane of locks as well as the possibility of constructing a sea-level canal have environmental implications.

In conclusion, I wish to emphasize the importance that I and my fellow Commissioners give to accomplishing our task. We welcome the interest of Congress in our work and look forward to a long and close relationship with this subcommittee as we move forward.

Before concluding my statement, Mr. Chairman, I would like to add that with respect to the deforestation, the Environmental Office in the Department of State looks on tropical deforestation worldwide as one of our priority items. While the situation which is presented to us today appears very serious and very difficult to cope with, in few parts of the world do we see cause and effect so clearly related, and this gives me some encouragement.

In the tropical forest, in Indonesia and parts of Central and South America, the cause and effect is not so readily apparent. So I hope with the cooperation of Panama and ourselves that we can make some real progress in this area.

Thank you, Mr. Chairman.

Mr. HUBBARD. Thank you, Mr. Hayne.

First, regarding the impact of Panamanian industrialization, in discussing a possible agenda for the Joint Commission on the Environment, you referenced the 1977 treaty environmental impact statement of the Department of State as a source for the statement of environmental problems relating to the canal. That impact statement did outline a number of the environmental problems of the canal area but was criticized because it failed to treat the potential consequences or Panamanian industrialization in areas near the canal.

Do you believe that industrialization should be considered as an issue for treatment by the Joint Commission?

Mr. HAYNE. Our mandate says we must deal with everything that has to do with implementation of the treaty. I, myself, would like to construe it, at least initially, narrowly we can so that we can give priority to the major problems.

Obviously, if the industrialization is a result of the treaty, we must give some attention to it; but I think I would give our first priority to some of the issues you have heard about today, particularly the watershed.

Mr. **Hubbard**. Regarding the budget, Mr. Hayne, in the President's fiscal year 1981 budget, what amounts are included for operation of the Joint Commission?

Mr. **Hayne**. As I understand it, the total figure is about $439,000, under which Panama puts up about 20–25 percent. This leaves us about $370,000 for this year for the operation of a Joint Commission.

I think this figure is a little larger the first year because it is supposed to go to help set up an office and procure supplies that we need.

Mr. **Hubbard**. Do you foresee any decrease in the amount requested of Congress?

Mr. **Hayne**. Well, to the extent that this figure is set up initially to include purchases, I would think that requests for subsequent years, at least for the next couple of years, would be somewhat less.

Mr. **Hubbard**. Regarding staff, do you expect to have the U.S. staff of the Secretariat paid out of appropriations for the Joint Commission on the Environment, or will these employees be loaned from other U.S. agencies?

Mr. **Hayne**. The U.S. participants all have their salaries paid for by U.S. agencies. The small Secretariat which we hope to establish in Panama will come out of our budget.

Mr. **Hubbard**. Do you know what portion of the expenses of the Joint Commission the Panamanian Government will bear?

Mr. **Hayne**. Yes, sir. I think it is 20–25 percent.

Mr. **Hubbard**. Twenty to twenty-five percent?

Mr. **Hayne**. Yes, sir.

Mr. **Hubbard**. Regarding public access, how will the Joint Commission interface with the public?

Mr. **Hayne**. That remains to be seen, sir. I see many advantages of doing this in as public a fashion as possible.

Mr. **Hubbard**. Do you expect that its interface will be solely with the two governments and their agencies, or will there be direct contact with the public?

Mr. **Hayne**. I would anticipate some direct contact, some public hearings. But we have, of course, to consult with our Panamanian colleagues and see what they think about it and see what is the most effective way to proceed.

We have not really decided that yet.

Mr. **Hubbard**. I have three more subjects to address. One, with respect to jurisdiction of the Joint Commission, article VI of the Panama Canal Treaty says that the Joint Commission is to periodically review the implementation of the treaty in order to avoid or mitigate adverse environmental consequences in Panama. On page 3 of your statement, you indicate the Joint Commission should give priority to protection of tropical forests and wildlife.

Do I understand that your vision for the Joint Commission extends to the entire canal watershed area, the problems of which we have heard so much about today?

Mr. **Hayne**. Yes, sir. This obviously is the area outside of the former zone, the watershed extends a long way outside of what used to be the canal zone, and I think that we have to give attention to that area.

The deforestation which has occurred has been, to the best of my knowledge, perfectly legal. The people who established farms and ranches in that area, did so in a legal fashion. But I read somewhere that if you try and use it for agriculture and the slope is greater than 45 degrees, the land is eroded. So the answer is, yes, I do anticipate covering the full area of the watershed.

Mr. **Hubbard**. Second, I have a question regarding activities of the Joint Commission.

What do you envision as the primary tasks which the Joint Commission should tackle in its first years of existence?

Mr. **Hayne**. Well, I think the first thing we have to do is to find out how we can set up a structure which is most effective in working with the Commission, with Panama, and with the U.S. agencies involved. So the first year may be one of setting up our structure.

At the same time, we have to acquire a data base on the environment and see where we are and where we need to be. I would hope that by the end of the year we would be in full operation.

Mr. **Hubbard**. And, lastly, regarding the subject of Panamanian environmental law, do you believe the present laws of Panama relating to environmental protection, standing by themselves, adequately protect U.S. interests in the Panama Canal?

Mr. **Hayne**. I have read a number of complementary statements about them but I do not have any firsthand knowledge, sir.

Mr. **Hubbard**. Is the Joint Commission on the Environment going to monitor to ascertain whether all the appropriate environmental laws of the United States and Panama are abided by and enforced when necessary?

Mr. **Hayne**. Well, I think these are tools to help the Joint Commission operate. I do not really think that it is the Joint Commission's responsibility to monitor the enforcement of United States and Panamanian laws.

Mr. **Hubbard**. Any questions from Congressman Livingston?

Mr. **Livingston**. No questions.

Mr. **Hubbard**. Mr. Terry Modglin or Merrill Whitman?

Mr. **Modglin**. I have one brief question, Mr. Chairman.

Mr. Hayne, do you envision that the Joint Commission on the Environment will be using advisory panels as it tackles the various issues that come before it?

Mr. **Hayne**. We certainly have to get advice in some form. The three of us obviously are not scientists and are not all engineers, so I anticipate either consultants or advisory panels in some form; yes.

Mr. **Modglin**. The reason why I raise that issue is because the Office of Technology Assessment's working paper in 1978 did suggest that as one alternative.

Mr. **Hayne**. I think it is an excellent idea and we will have to get help from whatever source we can.

Mr. **Modglin**. Thank you.

Mr. **Hubbard**. Mr. Hayne, let me ask you, in light of an article that I read yesterday in the Washington Post by George Will, he was indicating that the health of the former Shah of Iran is in danger and perhaps he was not receiving the best treatment possible in Panama.

The reports today are, however, that he is not to be admitted back into the United States for surgery but that Dr. Michael DeBakey, of Houston, Tex., could not do the operation because he was not licensed in Panama.

We noticed also in the news today that the former Shah of Iran has been sent back for 3 more weeks of rest because he was not strong enough to undergo the operation for the removal of the spleen.

You are Deputy Assistant Secretary for Environmental, Health and Natural Resources. I guess that is what prompts me, having read what I learned yesterday and what I heard this morning, to ask whether you have any firsthand facts about the condition of the Shah of Iran?

Mr. HAYNE. No, sir; I have nothing other than what is available to us all in the newspapers.

Mr. HUBBARD. Is the State Department working with the Panamanian Government regarding the health and safety of the former Shah of Iran?

Mr. HAYNE. I would presume so, sir, but this is handled on the other side of the building and I occupy myself primarily with environmental matters. There may be others here from the Department of State who can answer that question. I cannot.

Mr. HUBBARD. Is there anyone from the State Department here who knows the answer to those questions?

Mr. HAYNE. I believe the man who was here, sir, had to leave.

Mr. HUBBARD. I realize that was not part of your presentation and it was completely foreign to your testimony, but——

Mr. HAYNE. I would help you if I could, but I cannot.

Mr. HUBBARD. As chairman of the Panama Canal Subcommittee, I was tempted, rather I was prompted to ask you those questions in case you knew.

We appreciate your being here and we are fortunate to have someone with your background representing our country in the State Department with regard to environmental, health, and natural resource matters.

You were—I believe I am correct—one of the three U.S. citizens appointed by President Carter on January 7 to membership on the Joint Commission on the Environment?

Mr. HAYNE. That is correct, sir.

Mr. HUBBARD. We appreciate your appearing today to brief us on the role that the Joint Commission will play in attempting to resolve the environmental problems that now exist in the canal area.

We may have hearings on this subject in the future and, hopefully, you will be able to present testimony again, an update on the environmental aspects relating to the canal area.

Do you have anything else that you want to add?

Mr. HAYNE. No, sir. We will welcome the opportunity to appear again when the opportunity comes in the future.

Mr. HUBBARD. Thank you again for being with us.

That concludes our presentations. We have no more scheduled witnesses and, I trust, no more questions of those who have testified, so we can declare our meeting adjourned; and therefore, the chairman does declare the subcommittee adjourned subject to call of the Chair.

Thank you.

[The following was received for the record:]

TESTIMONY OF FRIENDS OF THE EARTH ON OVERSIGHT HEARING ON ENVIRONMENTAL ISSUES RELATED TO THE PANAMA CANAL BY DAVID E. ORTMAN, RESEARCH ASSOCIATE

My name is David E. Ortman, Research Associate with Friends of the Earth. Friends of the Earth is a national environmental organization with approximately 20,000 members. In addition, we have sister organizations in twenty foreign countries.

Environmental and conservation organizations have long been concerned about the preservation of the Canal Zone in Panama. We have also continued to voice opposition to a Sea-level Canal across the Isthmus.

Friends of the Earth concurs with and supports the testimony of Ira Rubinoff, Director of the Smithsonian Tropical Research Institute given before your committee 17 March 1980. Dr. Rubinoff mentions several areas of environmental concern and many opportunities for preservation and protection including the AID watershed project which FOE supports.

One area which was not discussed concerns the impacts of dredging and chemical and biological control of weed populations in the canal. 2,4-D Amine Salts are now under EPA's R-PAR process and may be taken off the market while Diquat is largely ineffective in turbid waters.

We view with alarm the fact that as of the 17 March Panama Canal Subcommittee hearing, the Joint Commission on the Environment had not had its first meeting. All efforts should be made to bring the Joint Commission on the Environment into a functioning body as soon as possible.

Enclosed for the record are several news articles concerning the progress of the proposed sea-level canal project. As Dr. Rubinoff reported, the Japanese have sent a delegation to Panama to explore the possibilities of canal construction. We would encourage the Subcommittee to investigate what environmental laws Japan has passed which would apply to such a project.

We wish to remind the Subcommittee that such a project is of international concern. The Norwegian Association for Ecology in a letter of 16th February 1978 stated that "the proposed sea-level canal across the American Isthmus may give local as well as distal impacts on marine ecosystems. This makes the project an international matter and a common practical and scientific concern."

It should also be noted that the 1978 report by the Office of Technology Assessment, cited by both Deputy Asst. Sec. of State William A. Hayne and Subcommittee Chairman Carroll Hubbard in their remarks, did not include a critique of either a sea-level canal or third land of locks.

Friends of the Earth urges this Subcommittee to take the lead in pointing out the grave environmental and ecological issues involved in such a project as the sea-level canal as well as insure that the Joint Commission of the Environment is given the financial resources to carry out its mission. Thank you for including these comments in the record.

[From the Seattle Times, Mar. 22, 1980]

JAPAN, PANAMA TO STUDY PLAN FOR SECOND CANAL

TOKYO.—Japan will cooperate with Panama in studying the feasibility of building a second canal linking the Atlantic and Pacific Oceans, Japanese newspapers reported yesterday.

The reports, quoting Japanese Foreign Ministry sources, said possible Japanese participation in the canal project will be the major topic when Panama's President Aristides Royo arrives in Tokyo tomorrow for a six-day state visit.

The sources quoted Japanese Prime Minister Masayoshi Ohira as saying that Japan "will give full consideration to participating in the project."

The papers said Japan has drafted an outline for a 61-mile sea-level canal that would be about 9 miles west of the existing waterway. Projected construction costs would total $8.3 billion over a 10-year period, with Japan, the United States and Panama financing the project.

The concept calls for the new canal to handle vessels up to 300,000 tons and be navigable in five or six hours, compared to the 66-year-old canal which is limited to ships under 40,000 tons and takes longer to transit because of its intricate lock system.

The United States would benefit by being able to move its warships more quickly from ocean to ocean, the papers said. The new canal also would ease the transfer of Alaskan oil to East and Gulf Coast refineries, they noted.

[From the Seattle Times, Jan. 27, 1980]

ALASKAN, JAPANESE PUSHING SEA-LEVEL PANAMA CANAL

(By Dean Katz)

WASHINGTON.—Senator Mike Gravel, Alaska Democrat, and a group of leading Japanese businessmen will travel this week to Panama in an attempt to arouse interest in a new sea-level Panama Canal.

A new Panama Canal could negatively affect Seattle's flourishing port operation as a major import-export center for Japanese trade.

And it could be presented as a supplement or alternative to the Northern Tier Pipeline Co.'s proposed west-to-east oil pipeline, beginning at Port Angeles.

Gravel said United States officials were cautiously studying the idea of constructing a new canal, which he estimated would cost from $10 billion to $15 billion. He said six federal agencies would issue a joint report "two or three months from now."

Meanwhile, Japanese business leaders seemed anything but cautious at a news conference Gravel called yesterday.

Among those traveling with Gravel to Panama will be Shigeo Nagano, president of the Japan Chamber of Commerce and Industry, and the heads of Japan's leading banks and largest shipbuilding company and executives of the huge Mitsubishi Corp. and other Japanese companies.

Gravel said a study completed by the federal government in 1970 had concluded that a new canal was feasible. Congress twice has refused to apporove Gravel's $8 million proposal to update that study. He and his Japanese friends are pushing the Japanese government to fund $25 million tripartite commission to study the idea.

Gravel discussed the idea with Prime Minister Masayoshi Ohira of Japan in November. Japan has yet decided whether to fund the study.

Panamanian officials have been "very enthusiastic about the possibility of building a canal," though they are approaching the idea "very cautiously," Gravel said.

President Carter said in 1977 that a sea-level canal eventually would be necessary.

Gravel said he envisioned the United States' role in any canal construction project as that of a guarantor of loans to build the waterway.

A State Department official familiar with Gravel's efforts said that "obviously we want to be able to respond to Senator Gravel's interest in the project. So we have begun within the executive branch an interagency reivew of whether and under what conditions we would even recommend that the 1970 study be updated.

"We certainly don't want to throw any cold water on this," said the official, who asked not to be identified. "On the other hand, the position of the administration is that we don't have a position with respect to the carrying out of a feasibility study at this time."

The major advantage of a new waterway would be its ability to accommodate the increasing number of large sea-going vessels that cannot squeeze through the existing canal.

For Alaska, Gravel said, the new canal would be a plus because it would cut the costs of shipping Alaskan oil.

For Japan, the benefits are obvious. A new canal would enable Japan to import finished products, grain and cotton from the East, Midwest and South, and oil from Eastern Mexico and Venzuela at a lower cost than it now does.

Bill Hoffman, legislative director for Gravel, acknowledged that a new canal could adversely affect Seattle's standing as a focal point for United States trade with Japan.

Gravel said he did not necessarily see a new Panama Canal serving as a replacement for a west-to-east pipeline, but rather as a supplement to it.

But a report prepared by Gravel's office said a preliminary analysis showed "a sea-level canal is a highly competitive alternative" to such a pipeline.

The country's existing oil-pipeline system runs south to north, from the Gulf Coast states to the Midwest and Northeast, Gravel said. A new Panama Canal would serve the present pipeline system and Gulf Coast refineries, while a new west-to-east pipeline, like Northern Tier's, would mean that the existing pipeline system "would have to be replaced" at a very high cost.

Though the oil companies have not evidenced much interest in the canal idea, neither have they shown any public support for the Northern Tier pipeline.

[From the Miami Herald, Jan. 17, 1980]

NEW PANAMA CANAL POSSIBLE IN 12 YEARS

PANAMA.—A new larger canal across Panama could be opened in 12 years if Japanese officials already interested in the project agree to participate in the construction. Panamanian authorities said.

Forty-five Japanese government and business leaders are to arrive in Panama Jan. 28 to discuss building the new, sea-level canal, which would run alongside the 65-year-old Colon-Balboa waterway, which uses a series of locks to pass ships between the Pacific and Atlantic oceans.

The new canal would be owned and operated by Panama but construction would be financed largely by Japanese banks, Panamanian officials said.

The canal would be built 10 miles west of the existing waterway and would cost about $8.5 billion at present prices. If construction began by 1984, the canal could be finished by 1992.

Initially, Panama planned to construct a shallow canal for ships of 150,000 tons or less. However, initial studies provided by Japanese companies recommended a canal that could accommodate 500,000-ton ships. The Japanese recommended a waterway 60 miles long and about 100 feet deep.

Negotiations with Japan on construction of the canal were started by Panamanian leader Gen. Omar Torrijos, who visited Tokyo in February. Later, President Aristides Royo invited the Japanese officials to visit Panama City.

Torrijos has been the main promoter of constructing a new canal to replace the existing route, which is expected to be less attractive to shipping in coming years because it cannot handle the supertankers.

Many ships already must circle South America because they re too large to fit through the canal.

[Whereupon, at 12:37, p.m., the subcommittee adjourned.]

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